Office - Supreme Court, U.S.
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SEP 23 1957
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No. 496

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,
Appellee,

v.

MICHAEL GALGANO,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT GALGANO'S APPENDIX

CURRAN, MAHONEY, COHN & STIM,
Attorneys for Defendant-Appellant,
Michael Galgano.

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Docket Entries

Crim. No. C 151-226.

VIOLATION

T 21, Secs. 173-174
T 26, Secs 4704(a) 4701
4703, 4771(a) & 7237(a)
T 18 Sec. 371 USC

Unlawful sale and possession of narcotics and conspiracy
Fourteen Counts.

THE UNITED STATES

VS.

Salvatore Russano—Cts 1-5-6-7-14
Ralph Russano—Cts 1-5-6-7-14
Anthony Carminati—Ct 14
William Mc Kenney Jr. Ct. 14
Frank Rich Cts 3-4-8-14
Robert Guippone Ct. 14
Joseph Ambrosini Cts 9-10-12-13-14
Carlos Ruiz Cts 2-14
Mary Lou Brolet Russano Ct. 14
Sebastian Della Universita Ct. 14
Michael Botto Ct. 14
Michael Galgano Ct. 14
David Shackelford Cts 3-14
Donald Bauer Ct. 14
Ada Volkell Cts. 11-12-13-14

Docket Entries

Date	*Proceedings*
11-19-56	Filed indictment
11-19-56	Mary Lou Brolet Russano pleads not guilty. Bail fixed at $500. Paroled until 11-23-56 to give bail.
	Michael Galgano pleads not guilty. Bail fixed at $7500. Deft. remanded.
	CASHIN, J.
11-21-56	Filed affidavit of John C. Lankenau, Assist. U. S. Atty., for a writ of Habeas Corpus ad Prosequendum for deft. Donald Bauer. Issued Writ. Ret. 11-23-56.
11-23-56	Salvatore Russano—Pleads not guilty—Released in custody of his Attorney—See Cr. 151-78 for bail.
	Ralph Russano—Pleads not guilty—Bail fixed at $20,000 to cover this indictment and Cr. 151-78. Deft. remanded.
	Anthony Carminati—Pleads not guilty—Released in custody of his attorney. See Cr. 151-78 for bail.
	William McKenney Jr.—Pleads not guilty—Released in custody of his attorney. See Cr. 151-78 for bail.
11-23-56	Frank Rich—Pleads not guilty—Bail fixed at $5,000 to cover this indictment and Cr. 151-78, Cr. 151-79 and Cr. 151-27. Deft. remanded.
	Joseph Ambrosini—Pleads not guilty—Bail continued at $15,000.
	Robert Guippone—Warrant of arrest ordered. Warrant issued.
	Carlos Ruiz—Warrant of arrest ordered. Warrant issued.

Docket Entries

Date	*Proceedings*
	Sebastian Della Universita—Warrant of arrest ordered. Warrant issued.
	David Shackelford—Pleads not guilty—Released in the Custody of his attorney. See Cr. 151-79 for bail.
	Ada Volkell—Pleads not guilty—Bail of $3,000 to be rewritten by 4 P. M. today.
	Donald Bauer—Produced in Court on writ and pleads not guilty—Bail fixed at $2,500. Bench Warrant ordered lodged. CASHIN, J.
11-23-56	Filed notice of appearance of Attys Saunders & Franklin, 1650 Broadway, NYC for deft. Ada Volkell.
11-23-56	Filed notice of appearance of Attys Fusco & Lazarus, 458 Brook Ave., Bronx, NY for deft. Mary Lou Brolet Russano
11-23-56	Filed remand for Michael Galgano dated 11-19-56. CASHIN, J.
11-23-56	Filed affdt. and notice of motion for an order severing the indictment with respect to David Shackelford and for a separate trial.
11-23-56	Filed recognizance for Ada Volkell for $3000. Public Service Mutual Ins. Co.
11-26-56	Michael Botto—Pleads not guilty—Released in custody of his attorneys—See Cr. 151-79 for bail. CASHIN, J.
11-30-56	Filed Writ of Habeas Corpus Ad Test. for deft. Donald Bauer dated 11-21-56, and entered Marshal's execution dated 11-21-56. CASHIN, J.

Docket Entries

Date	*Proceedings*
11-30-56	Filed Warrants of Arrest for Defendants Carlos Ruiz and Sebastian Della Universita, dated 11-23-56
12- 3-56	Filed affidavit of John C. Lankenau, Assist. U. S. Atty in opposition to motion for severance of trial of deft. David Shackelford.
12- 3-56	Memo endorsed on motion papers filed 11-23-56. Motion denied. So Ordered. RYAN, J.
12-12-56	Salvatore Russano pleads guilty (Atty present) to counts 1-5-6-7-14. Pre-sentence Investigation ordered. Sentence adjourned until 1-3-57. Bail continued. RYAN, J.
12-12-56	Ralph Russano pleads guilty (Atty Present) to counts 1-5-6-7-14. Pre-sentence Investigation ordered. Sentence adjourned until 1-3-56. Remanded. Order to be signed committing deft to Bellevue Hospital for observation. RYAN, J.
12-12-56	Ada Volkell ordered re-fingerprinted. RYAN, J.
12-12-56	Filed notice of appearance of Bella V. Dodd Atty, 100 W. 42nd St., for defts Salvatore Russano and Ralph Russano.
12-12-56	Filed substitution of counsel Bella V. Dodd for deft. Mary Lou Brolet Russano. Consented to. So ordered HERBERT A CHARLSON, Clerk
12-13-56	Oral motion by Mary Lou Brolet Russano for severance—Denied Exception taken. RYAN, J.
12-13-56	Filed affdt. and notice of motion by Mary Lou Brolet Russano to inspect Grand Jury Minutes. 12-13-56—Memo endorsed—Motion denied. RYAN, J.

Docket Entries

Date	*Proceedings*
12-14-56	On oral motion of Assist. U. S. Attorney Ruskin indictment severed as to Deft. Michael Botto. RYAN, J.
12-17-56	Filed affidavit of Assist John C. Lankenau, Assist U. S. Attorney, for a writ of Habeas Corpus Ad Prosequendum for Donald Bauer. Issued Writ. Ret. 12-18-56.
12-17-56	Filed order committing Ralph Russano to Bellevue Hospital for mental and physical examination. RYAN, J.
12-17-56	Salvatore Russano and Ralph Russano are brought to Court and upon being questioned by Judge Ryan regarding pleas of guilty entered on 12-12-56 they again assert they are guilty as charged. RYAN, J.
12-19-56	On oral motion of Assist. U. S. Attorney Ruskin, indictment is severed as to defendants Joseph Ambrosini and Ada Volkell. RYAN, J.
12-19-56	Florence M. Kelley, Bernard Moldow of counsel assigned to Donald Bauer. RYAN, J.
1- 3-57	Salvatore Russano and Ralph Russano—sentences adjourned until 1-21-57 and both defendants remanded without bail. RYAN, J.
1- 4-57	Filed Affidavit of Robert K. Ruskin, Assist U. S. Atty dated 12-18-56 and true copy of order dated 12-17-56 committing Ralph Russano to Bellevue Hospital, for mental and physical examination for a period of ten days. Ryan, J. Entered Marshal's return dated 12-18-56.

Docket Entries

Date	*Proceedings*
1- 7-57	On motion of the Government, Indictment severed as to David Shackelford and Donald Bauer. SUGARMAN, J.
1- 7-57	Case severed as to Deft. Mary Lou Brolet Russano. Trial begun as to Defendants Anthony Carminati, William McKenney Jr., Frank Rich and Michael Galgano before Judge Weinfeld and jury.
1- 8-57	Trial cont'd.
1- 9-57	Trial cont'd.
1-10-57	Trial cont'd.
1-11-57	Trial con't.—Government rests. Counsel for the defendants move to dismiss and for judgment of acquittal. Motions denied. Weinfeld, J. Deft. rests. Both sides rest. Counsel for defendants renew motions to dismiss. Motion denied. Weinfeld, J. Deft. Frank Rich cited for contempt of Court. WEINFELD, J.
1-14-57	Trial con'd and concluded.—Jury retires to deliberate. Jury returns verdict of "Guilty" as charged. Carminati, McKenney Jr, Galgano guilty on Count 14, Rich guilty on Counts 3, 4, 8 and 14. Defendants remanded. Sentence set for 2-5-57. Pre-sentence report ordered. Bail revoked as to deft. Rich. WEINFELD, J.
1-23-57	Filed affidavit and notice of motion for an order that counts 2-6-8-10-12 and 14 of Indictment C. 151-284 as against Joseph Ambrosini, be consolidated for trial with C. 151-226. (See C. 151-284). Motion argued 1-28-57. Decision reserved. SUGARMAN, J.

Docket Entries

Date	*Proceedings*
2- 2-57	Memo endorsed on motion papers filed 1-23-57. Motion granted. So ordered 2-2-57. (See C. 151-284 for papers). SUGARMAN, J.
2- 5-57	Filed second offender information as to Michael Galgano. The defendant (Atty present) admits he is the person named and charged in the within information. WEINFELD, J.
2- 5-57	Anthony Carminati—Sentence adjourned until 2-15-57. Remanded. WEINFELD, J.
2- 5-57	Filed Judgment as to William McKenney Jr.—Sentence—Five (5) Years on count 14. at a place of confinement to be designated by the Atty. Genl. of the U. S. Remanded. WEINFELD, J.
2- 5-57	Issued commitment and copies.
2- 5-57	Filed Judgment as to Salvatore Russano—Sentence—Five (5) Years on each of counts 1-5-6-7 and 14. to run concurrently with each other at a place of confinement to be designated by the Atty. Genl. of the U. S. Fined $1. on count one. Fine remitted. Remanded. WEINFELD, J.
2- 5-57	Issued commitment and copies. WEINFELD, J.
2- 5-57	Filed Judgment as to Ralph Russano—Sentence—Five (5) Years on count 1. and fined $1. Fine remitted. Seven (7) Years on counts 5-6-7 and 14, sentences on counts 1-5-6-7 & 14. to run concurrently with each other at a place of confinement to be designated by the Atty. Genl. of the U. S. Remanded. WEINFELD, J.

Docket Entries

Date	*Proceedings*
2- 5-57	Issued commitment and copies.
2- 5-57	Michael Galgano. (Information filed charging prior U. S. Narcotic Law violation) Filed Judgment as to Michael Galgano—Sentence—Ten (10) Years on count 14. at a place of confinement to be designated by the Atty. Genl. of the U. S. Remanded. WEINFELD, J.
2- 5-57	Filed Judgment as to Frank Rich—Sentence—Five (5) Years on Each of counts 3 and 4. Ten (10) Years on each of counts 8 and 14. Sentences on counts 3-4-8 and 14 to run concurrently with each other at a place of confinement to be designated by the Atty Genl. of the U. S. Fined $1. on counts 3 and 4. Fines remitted. Remanded. WEINFELD, J.
2- 5-57	Issued commitment and copies.
2- 5-57	The Court adjudges Frank Rich guilty of criminal contempt of Court committed on 1-11-57 and defendant sentenced to Ninety (90) Days to run concurrently with sentences on counts 3-4-8 and 14. Weinfeld, J. (See Cr. 152-92 for second citation for contempt of Frank Rich).
2- 5-57	Michael Galgano—Defendant's counsel moves to have court decide defendant is not a second offender pursuant to conviction under count 14 of indictment C 151-226. Motion denied. WEINFELD, J.
2- 4-57	Filed affidavit of Atty Mortimer Sattler (unsigned) dated 1-25-57 in opposition to motion filed 1-23-57. (See C 151-284)

Docket Entries

Date	*Proceedings*
2- 5-57	Filed notice of appeal by Michael Galgano dated 2-5-57. 5.00
2- 7-57	Filed order releasing the deft Michael Galgano upon the posting of security in the sum of $25,000 pending the determination of appeal from the Fed. House of Detent. West St., NYC WEINFELD, J.
2-11-57	Filed remands for Ralph Russano and Frank Rich dated 11-23-56. CASHIN, J.
2- 1-57	Filed remand for Salvatore Russano dated 1-3-57. RYAN, J.
2-11-57	Filed remand for William McKenney Jr and Michael Galgano dated 1-14-57. WEINFELD, J.
2-11-57	Filed true copy of order filed 2-7-57. Deft. Michael Galgano released on bail 2-8-57. Bishopp, Commr.
2-11-57	Filed commitments (4) and entered marshal's returns. Defts. Ralph Russano, Salvatore Russano, William McKenney, Jr. and Michael Galgano delivered to Det. Hdqtrs. NYC 2-5-57 for service or sentence or transfer to another institution by prison van.
2-13-57	Filed notice of appeal by William McKenney Jr. dated 2-13-57. 5.00
2-14-57	Filed Judgment as to Anthony Carminati (Second Offender) Sentence—Ten Years on count 14., at a place of confinement to be designated by the Atty. Genl. of the U. S. Remanded. WEINFELD, J.
2-14-57	Issued commitment and copies.

Docket Entries

Date	*Proceedings*
2-14-57	Filed Second Offender Information—Anthony Carminati (Atty present) admits he is the person named and charged in the within information. WEINFELD, J.
2-15-57	Filed notice of appearance of Attys Curran, Mahoney Cohn & Stims for deft. Anthony Carminati.
2-15-57	Filed notice of appeal as to Deft. Frank Rich dated 2-15-57 5.00 (Copy mailed to Warden, Detent. Home for Men. 125 White St. NYC)
2-15-57	Filed Remand as to Deft. Anthony Carminati dated 1-14-57 WEINFELD, J.
2-15-57	Filed commitment as to Deft. Anthony Carminati and entered marshal's return. Deft. delivered to Det. Hdqtrs. NYC. 2-14-57 for service of sentence or transfer to another institution by prison van.
2-18-57	Anthony Carminati—Oral motion for bail pending appeal—Motion argued. Dec. Reserved. WEINFELD, J.
2-19-57	Filed opinion by Weinfeld, J. #23272: Motion of Anthony Carminati for bail pending appeal is denied.
2-20-57	Filed notice of appeal by Anthony Carminati dated 2-15-57. 5.00
2-26-57	Filed Affidavit for writ of habeas corpus ad Test., as to Deft. Frank Rich. Issued writ. Ret. 2-27-57.
2-27-57	Filed affidavit of John C. Lankenau, Assist. U. S. Atty., dated 2-26-57 for a Writ of Habeas Corpus Ad Testificandum for Marvin Citrin. Iss. Writ. Ret. 2-28-57

Docket Entries

Date	*Proceedings*
2-27-57	Filed affidavit of John C. Lankenau, Assist. U. S. Atty., dated 2-26-57 for a Writ of Habeas Corpus Ad Testificandum for Donald Bauer. Iss Writ. Ret, 2-28-57
3- 1-57	Filed notice against election of service of sentence by Anthony Carminati dated 2-27-57
3- 4-57	Filed true copies of Writ of Habeas Corpus Ad Testificandum (2) for Marvin Citrin and Donald Bauer. Entered execution of both writs on 2-27-57 by U. S. Marshal.
3-11-57	Filed a true copy of a Writ of Habeas Corpus ad Testificandum for Frank Rich dated 2-26-57 and entered Marshal's return dated 2-27-57. Writ Satisfied 3-8-57 LEVET, J.
3-11-57	Filed affidavit of John C. Lankenau, Assist U. S. Atty for a Writ of Habeas Corpus ad Testificandum for Donald Bauer. Iss Writ. Ret. 3-11-57.
2-26-57	Trial begun before Judge Levet and jury as to defts. Mary Lou Brolet Russano, David Shackelford. Ada Volkell and Joseph Ambrosini. (Consilidated with Cr. 151-284).
2-27-57	Trial cont'd.
2-28-57	Trial cont'd.
3- 1-57	Trial cont'd.
3- 4-57	Trial cont'd.
3- 5-57	Trial cont'd.
3- 6-57	Trial cont'd.—Count 3 dismissed as to deft. David Shackelford.
3- 7-57	Trial cont'd.
3- 8-57	Trial cont'd.
3-11-57	Trial cont'd.—Summations.

Docket Entries

Date	*Proceedings*
3-12-57	Trial cont'd.—Summations.
3-13-57	Trial cont'd. and concluded. Jury retires to deliberate. Jury returns verdict of "Guilty", as to all counts of the indictments as to Joseph Ambrosini. "Guilty on count 14 as charged in the indictment as to David Shackelford. "Guilty" on all counts as charged as to Ada Volkell. Jury disagrees as to Mary Lou Brolet Russano. Joseph Ambrosini remanded. Volkell continued on Bail pending sentence which is set for 4-3-57 Room 318. Pre-sentence reports ordered for Ambrosini, Shackelford and Volkell. LEVET, J.
	Bail of $2000. fixed for Shackelford pending sentence. (Bail in 151-79 cont'd)
3-14-57	Filed Writ of Habeas Corpus ad Testificandum for Frank Rich dated 2-26-57. Writ satisfied 3-8-57. LEVET, J.
3-13-57	Filed stipulation dated March 5, 1957 substituting Curran, Mahoney, Cohn & Stim Esqs. of 29 Broadway, NYC in place and stead of Otto F. Fusco as Attys for the defendant-appellant Michael Galgano in a appeal now pending in the US CA. So ordered 3-13-57. HERBERT A. CHARLSON, Clerk.
3-15-57	David Shackelford's bail reduced to $1,000. on this indictment pending sentence. Deft. allowed until 3-16-57 at 11 o'clock to give bail. LEVET, J.
3-18-57	Filed notice that the record on appeal as to Michael Galgano has been certified to the US CA on 3-18-57.

Docket Entries

Date	*Proceedings*
3-20-57	Filed Transcript of record of proceedings, dated Jan. 7, 8, 9, 11, 14 & Feb. 14-1957
3-22-57	Filed Transcript of record of proceedings, dated 2-6-57
3-21-57	Filed Transcript of record of proceedings, dated 3-7-57
4- 3-57	Motion by Joseph Ambrosini to set aside verdict —denied.
4- 3-57	Filed Judgment—Joseph Ambrosini—Ten Years on each of counts 9-10 and 12. Five Years on each of counts 13 and 14. Sentences to run concurrently with each other and concurrently with sentences imposed this day on C 151-284 at a place of confinement to be designated by the Atty Genl. Remanded. Motion for bail pending appeal adjd to 4-5-57. LEVET, J.
4- 3-57	Motion by Ada Vokell to set aside verdict. Denied. Motion by Ada Vokell for mistrial renewed. Denied. LEVET, J.
4- 3-57	Filed Judgment—Ada Vokell—Six Years on each of counts 11 and 12 Five Years on each of counts 13 and 14. Sentences on all counts to run concurrently at a place of confinement to be designated by the Atty Genl. and the Court recommends that she receive medical treatment and hospitalization. Deft. to surrender on 4-5-57. Bail cont'd. Motion for bail pending appeal is adjd to 4-5-57. LEVET, J.
4- 3-57	Issued commitment and copies for defts. Ambrosini and Vokell.

Docket Entries

Date	*Proceedings*
4- 5-57	Filed notice that the supplemental record of appeal has been certified to the US CA on 4-5-57.
4- 8-57	Filed remand dated 3-13-57. LEVET, J.
4- 8-57	Filed commitment and entered marshal's return. Deft. delivered 4-3-57 to Det. Hdqtrs. NYC., for service of sentence or transfer to another institution by prison van.
4-12-57	Oral motion for bail pending appeal of Ada Volkell—Argued. Motion granted and bail is fixed in the sum of $5,000. pending appeal. Deft. allowed until 11 A.M. on 4-15-57 to give bail. Bail of $3,000 ordered continued until new bail is furnished. LEVET, J.
4-12-57	Oral motion by Joseph Ambrosini for bail pending appeal—Argued. Motion denied. LEVET, J.
4-12-57	Filed notice of appeal to US CA by Ada Volkell. 5.00
4-12-57	Filed notice of appeal to US CA by Joseph Ambrosini. 5.00
4-12-57	Filed Bond pending Appeal dated 4-15-57 for Ada Volkell, in the sum of $5,000. Public Service Mutual Insurance Company. (Surety)

Judgment

(91)

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

No. C 151-226

UNITED STATES OF AMERICA

v.

MICHAEL GALGANO

On this 5th day of February, 1957, came the attorney for the government and the defendant appeared in person and by counsel,

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly conspiring to violate the Narcotic Laws of the United States (Title 26, Secs. 4704 (a), 4701, 4703, 4724 (c), 4771 (a); Title 21, Secs. 173 and 174; Title 18, Sec. 371 USC.) as charged in count 14,

and the defendant, duly represented by counsel, having admitted he is the same person previously convicted on one separate Federal Narcotic Violation, and the court having asked the defendant whether he has anything to say

why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ten (10) Years on count 14.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

EDWARD WEINFELD
United States District Judge

Indictment

(2)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

(15)

FOURTEENTH COUNT

1. Commencing on or about the 1st day of January, 1951 and continuously thereafter up to and including the day of the filing of this indictment, in the Southern District of New York, Salvatore Russano, Ralph Russano, Anthony Carminati, William McKenney, Jr., Frank Rich, Robert Guippone, Joseph Ambrosini, Carlos Ruiz, Mary Lou Brolet Russano, Sebastian Della Universita, Michael Botto, Michael Galgano, David Schackelford, Donald Bauer and Ada Volkell, the defendants, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together with John Sciarra, David Oglesby, Irwin Greenspun, Vicki Cratty, Freddie Cratty, Abraham Schwartz, Carrenza M. Howard, Daniel Murphy and "John Doe" also known as Wilson, white male, blonde hair, 30-35 years of age, approximately 5'11" tall and 180 pounds weight, named herein as co-conspirators, but not defendants, and

with others to the grand jury unknown to violate the United States Code, Title 26, Sections 4704(a), 4701, 4703, 4724(c) and 4771(a), and Title 21, Sections 173 and 174.

2. It was part of the said conspiracy that the said defendants unlawfully, wilfully and knowingly would sell, dispense and distribute a quantity of narcotic drugs, the exact amount and nature thereof being to the grand jury unknown, in that the said narcotic drugs would not be in the original stamped package or from the original stamped package, that is to say, that there would not be affixed to the container in and from which the said defendants would sell, dispense and distribute the narcotic drugs as aforesaid any United States Internal Revenue Stamps as required by Section 4703, of Title 26, United States Code in violation of Sections 4701, 4703, 4704(a) and 4771(a) of Title 26, United States Code.

(16) 3. It was further a part of said conspiracy that the said defendants, being persons who had not registered and who had not paid the special tax provided for by Sections 4702(a), 4721 and 4722 of Title 26, United States Code, unlawfully, wilfully, and knowingly would have in their possession and under their control a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, in violation of Section 4724(c) of Title 26, United States Code.

4. It was further a part of said conspiracy that the said defendants unlawfully; wilfully and knowingly would receive, conceal, sell and facilitate the transportation, concealment and sale of the aforesaid narcotic drugs, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said

narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

OVERT ACT

1. In pursuance of the said conspiracy and to effect the objects thereof, on or about the 1st day of April, 1955, in the Southern District of New York, in the Cafe Expresso, 180th Street and Arthur Avenue, Bronx, New York, Robert Guippone, Ralph Russano, Salvatore Russano, and Michael Botto met.

2. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 10th day of May, 1955, in the Southern District of New York, in the Cafe Expresso, 180th Street and Arthur Avenue, Bronx, New York, Joseph Ambrosini, Ralph Russano, Salvatore Russano, Michael Botto and Frank Rich had a conversation.

(17) 3. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 10th day of September, 1955, in the Southern District of New York, Salvatore Russano and Ralph Russano, sold approximately 2 ounces of heroin to Carlos Ruiz in John's Bar, 180th Street and Third Avenue, Bronx, N. Y.

4. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 15th day of September, 1955, in the Southern District of New York, in the Delmont Bar, 624 East 180th Street, Bronx, New York, Michael Galgano and Michael Botto had a conversation.

5. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 10th day of October, 1955, in the Southern District of New York, Salvatore Russano, Ralph Russano and Anthony Carminati met David Ogelsby and two unknown men in John's Bar on 180th Street and Third Avenue, Bronx, N. Y.

6. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 15th day of February, 1956, in the Southern District of New York, in the vicinity of 51st Street and 8th Avenue, New York, N. Y., Sebastian Della Universita and Michael Botto had a conversation.

7. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 15th day of February, 1956, in the Southern District of New York, Salvatore Russano, Ralph Russano and Anthony Carminati, had a conversation with David Ogelsby on the corner of Clinton and East Tremont Avenues, Bronx, New York.

8. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 1st day of March, 1956, in the Southern District of New York, Salvatore Russano, Ralph Russano, Anthony Carminati, David Oglesby and John Doe, a/k/a Angelo had a conversation in a luncheonette at the corner of East Tremont and Park Avenues, Bronx, New York.

(18) 9. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 20th day of June, 1956, in the Southern District of New York, in the vicinity of 51st Street and 8th Avenue, New York, N. Y., Michael Botto had a conversation with Abraham Schwartz and John Sciarra.

10. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 23rd day of June, 1956, in the Southern District of New York, in the vicinity of 77th Street and Central Park West, Frank Rich sold approximately ½ ounce of heroin to Abraham Schwartz and John Sciarra.

11. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 26th day of June, 1956, in the Southern District of New York, in the vicinity of 51st Street and 8th Avenue, New York, N. Y., David Schackelford received one hundred dollars $100.00) from John Sciarra.

12. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 28th day of June, 1956, in the Southern District of New York, in the vicinity of 180th Street and Broadway, New York, N. Y. Frank Rich sold approximately 1 ounce of herbin to Abraham Schwartz and John Sciarra.

13. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 20th day of August, 1956, in the Southern District of New York, Salvatore Russano and Ralph Russano sold 35.2 grains of heroin to an agent of the Federal Bureau of Narcotics in a luncheonette at the corner of East Tremont and Clinton Avenues, Bronx, N. Y.

14. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 22nd day of August, 1956, in the Southern District of New York, Donald Bauer and Frank Rich met in the vicinity of 51st Street and 8th Avenue, New York, N. Y.

(19) 15. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 22nd day of August, 1956, in the vicinity of the Delmont Bar 624 East 180th Street, Bronx, N. Y., Anthony Carminati and Ralph Russano had a conversation.

16. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 22nd day of August, 1956, in the Southern District of New York, Salvatore Russano and Ralph Russano sold approximately 1 ounce of heroin to Frank Rich in the vicinity of LaFontaine Avenue between 179th Street and 180th Streets, Bronx, N. Y.

17. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 7th day of September, 1956, in the Southern District of New York, William McKenney, Jr. had a telephone conversation with David Oglesby.

18. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 25th day of September, 1956, in the Southern District of New York, Joseph Ambrosini while driving a 1956 Oldsmobile between the vicinity of 696 East Fordham Road, Bronx, N. Y. and the vicinity of Fordham Road and the Grand Concourse, sold approximately 2 ounces of heroin to Carrenza M. Howard.

19. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 18th day of October, 1956, in the vicinity of the U. S. Courthouse, Foley Square, New York, N. Y., William McKenney, Jr. and Mary Lou Brolet Russano had a conversation with Michael Botto.

20. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 18th day of October, 1956, in the Southern District of New York, in Silverio's Restaurant, 542 East 180th Street, Bronx, N. Y., Mary Lou Brolet Russano and Sebastian Della Universita had a conversation.

(20) 21. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 16th day of November, 1956, in the Southern District of New York, Joseph Ambrosini while driving a 1956 Oldsmobile between the vicinity of Fordham Road and 189th Street, Bronx, N. Y. and the vicinity of Tremont and Crotona Avenues, Bronx, N. Y. sold approximately 2 ounces of heroin to Carrenza M. Howard.

22. In further pursuance of the said conspiracy and to effect the objects thereof; on or about the 16th day of November, 1956, in the Southern District of New York, Ada Volkell placed 2 ounces of heroin in a stairwell window ledge located in 496 East 189th Street, Bronx, N. Y.

23. In further pursuance of the said conspiracy and to effect the objects thereof, on or about the 16th day of November, 1956, in the Southern District of New York, Ada Volkell and Joseph Ambrosini had in their possession in apartment E-25 496 East 189th Street, Bronx, New York approximately 8½ ounces of heroin, glassine bags, quinine, sugar, scales, and other miscellaneous equipment commonly employed in diluting heroin.

(Title 18, United States Code, Section 371).

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Foreman

PAUL W. WILLIAMS
United States Attorney

Excerpts From Testimony

* * * * *

MICHAEL BOTTO—for Government.

Direct Examination

(286) During this period did you ever discuss the quality of narcotics with Ralph? A Well, I asked him what kind of stuff it was. He told me it was pure.

Q. Did you have cause to complain that it was not? A. I did.

Q. When was this? A. Some time around September or October I told him that the stuff was getting bad; that I was getting complaints on the stuff.

And he had told me that if I want to pay a little more money he would get me better stuff.

I told him I was willing to pay the extra money.

Q. Well, how much more did he want? A. He told me had a connection for $400.

Q. $400 for pure? A. For an ounce of pure.

Q. Did he say who the connection was? (287) A. I asked him who the connection was. He told me it was Black Mike.

Mr. Fusco: If your Honor pleases, I object to that as certainly not being in furtherance of any conspiracy charged here, and I object to it on the further ground that it is purely hearsay.

Mr. Londin: If your Honor please, the Government contends it is completely relevant and in furtherance of the conspiracy and offers it subject to connection.

The Court: It will be received subject to connection.

Mr. Fusco: We are thus being deprived of the right of cross-examination.

The Court: No, you will have your right to full cross-examination.

Mr. Fusco: Thank you.

Q. Did you ever meet Black Mike? A. Yes, sir.
Q. Did you learn his true name? A. No, sir.
Q. Do you see Black Mike here in court? A. The second on the left.

Mr. Londin: May the record indicate that (288) the witness has identified the defendant Galgano.

The Court: That is Michael Galgano?

Mr. Londin: That is correct.

The Court: When did you meet the man you now identify as Black Mike for the first time?

The Witness: I met him around July or August of '55—1955.

Mr. Fusco: Now, if your Honor pleases, may I ask you to urge this witness to kindly raise his voice and not have this going on in such a secretive way? Will you please ask him to raise his voice so we can all hear it?

The Court: You may move up.

Mr. Fusco: I have one difficulty here as I am looking at him through a corner of the courtroom to begin with.

The Court: Well, move right up to the front here and in that way you can look directly at him.

Mr. Fusco: Thank you.

Q. When did you first meet Mike Galgano?

Mr. Fusco: Hold up will you, please, a moment, and let me be seated, counselor?

Mr. Londin: I am sorry.

A. Some time in the summer of 1955.

(289) Mr. Fusco: Could we have that answer read, your Honor?

The Court: Yes, read the question and answer.

(Question and answer read.)

Q. Now, you just testified that you had a conversation—

The Court: Where did you meet him?

The Witness: I met him in the lunchroom on Third Avenue between Arthur and Hughes I think it was.

Q. Do you know the name of the lunchroom? A. No, I don't know the name of the lunchroom.

Q. Now, after this conversation that you said you had with Ralph in September or October of 1955 did you again discuss the quality of narcotics with Ralph Russano? A. Yes, some time in November of 1955 I told him the stuff was getting bad again, that I was getting more complaints by the customers, and that if it wasn't any better I would have to stop dealing with him.

So he told me to go ahead and stop dealing with him.

So I stopped.

Q. When you got these deliveries of narcotics from the Russanos how were the narcotics packed? (290) A. In a glassine bag which was inside of a bank envelope.

Mr. Londin: Will you please mark these for identification?

(Marked Government Exhibits 8 for identification through 15 for identification.)

Q. I show you Government Exhibit 7 for identificatiion, Mr. Botto, and ask you whether you have ever seen either this or something like it?

Mr. Fusco: I object to that, your Honor, if we ever seen this or something like it.

Mr. Londin: Your Honor, I am not asking the witness whether—I am putting a question to the witness and asking him whether he had ever seen this envelope or if it resembles anything that he had ever seen.

The Court: I will ask him if that resembles an envelope that he has seen.

The Witness: It resembles.

Q. Look at it carefully so that you are quite certain. A. I have seen it, yes.

Q. It is your testimony then that this envelope is similar to the envelope in which you received narcotics? (291) A. Almost the same.

Mr. Fusco: I object to that, if your Honor pleases.

Mr. Kove: Objected to.

The Witness: Almost the same.

The Court: Overruled.

* * * * *

(296) Q. How was the heroin packed, by the way? A. How was it packed?

Q. Yes. A. A glassine bag was inside of a bank envelope.

* * * * *

(313) A. Well, when I got back I had moved out of the place I was living and I moved uptown. And around October 12, 1956, I got arrested on this charge here.

* * * * *

(333) Q. After you made bail and left West Street did you have a conversation with Michael Galgano? A. Yes, sir.

Mr. Kove: I suppose now would be the proper time to object to this testimony, your Honor.

The Court: I do not know the nature of the conversation as yet.

Mr. Kove: Well, your Honor, he said or asked in the question after he had made bail, and certainly that is after the arrest.

The Court: Yes.

This is being received at this point only with respect to the defendant Michael Galgano.

(334) Mr. Fusco: May I object to that, your Honor?

The Court: And I am instructing the jury that it is not to be considered and it is not to be received with respect to any other defendant.

Mr. Fusco: On behalf of Michael Galgano I object, if your Honor pleases.

The Court: Overruled.

Mr. Fusco: Exception.

Q. Can you give us the approximate date of this meeting? A. October 15th or 16th. I think it was the 16th.

Q. And where did this conversation take place? A. The Delmont Bar.

Q. Where is the Delmont Bar? A. Around 180th Street and Third—Hughes Avenue, some place around there.

Q. Do you see here in court the man with whom you had this conversation? A. The second one from the left.

Mr. Londin: May the record indicate that the witness has identified the defendant Michael Galgano?

Q. And did you discuss narcotics with Galgano? A. I did.

(335) Q. What did you say to Galgano and what did he say to you about narcotics? A. I told him that I was paying $400 an ounce for the stuff that he was giving to Ralph.

Mr. Fusco: That is objected to.

Q. Exactly what did you say to him, sticking as carefully as you can to the language of the conversation. A. I told him I was buying narcotics from Ralph and paying $400 an ounce, and that Ralph had told me "He was getting it from you."

He told me that when he gave the stuff to Ralph the stuff was all right.

The Court: Now, members of the jury, I am emphasizing that this testimony is being received only as against the defendant Galgano; it is not being received as against any other defendant on trial, and you are not to consider it as being against any other defendant.

Q. Did you meet anyone else at this time? A. Yes, I was introduced to Tony Carminati at that time.

Q. Do you see him in court now? A. The fellow on the end.

(336) Mr. Londin: May the record indicate that the witness has identified the defendant Anthony Carminati.

The Court: What date is this?

Mr. Londin: October 16th I think it was, your Honor.

(337) Mr. Kove: That is objected to, your Honor, on the ground that as far as the indictment is concerned it is subsequent to the arrest, the conspiracy having already come to an end.

The Court: It will be received at this time as against the defendant Carminati only, and not as against any other defendant.

Q. Now, you met Carminati on the same day that you spoke to Galgano? A. That is right.

Mr. Kove: What was that date again?

Q. What was this date? A. The day after I got out. I believe it must have been the 16th of October.

Q. And how soon after meeting or talking to Galgano did you meet Carminati? A. About 15 minutes later, half an hour later.

Q. And did you go over yourself? A. No, Black Mike brought me over there.

• • • • •

Michael Botto—for Government—Cross
Discussion

Cross-Examination:

(485) Q. Now, how many times did you say you saw Michael Galgano?

Mr. Londin: May we have some time fixed?

A. The most times I seen him was about three times. That is about the most I ever seen him.

Q. You say you saw him on this day in July or August 1955? A. That is right.

Q. And I think you related to us that after you were released on bail— A. I seen him again.

(486) Q. You saw him again? A. Yes.

Q. And those would be the times which you saw Michael Galgano? A. I told you two or three times was the most I ever seen him.

* * * * *

(491) The Court: Now, do you remember testifying yesterday that you had a conversation with Galgano in October of 1956?

The Witness: Yes.

The Court: Following your release on bail?

The Witness: Yes, sir.

The Court: And do you remember where that was?

The Witness: At the Delmont Bar.

The Court: Now, before I put any further questions, may I say this to the jury;

The Judge has a function under that ruling upon objections and preserving order during the course

of the trial. One of his functions is to keep the issues within scope and ask questions in order to clarify matters that you may be called upon to decide.

Now, the fact that I ask questions is no indication that I have any point of view as to either the witness's credibility or as to how the case is to be (492) decided, nor do I entertain any opinion at all with respect to the subject matter. My asking the questions is simply to clarify the issues that are in the case.

You testified, did you not, that you saw Mr. Galgano at the Delmont Bar?

The Witness: Yes, sir.

The Court: That was in October 1956?

The Witness: Yes, sir.

The Court: Did you have any conversation with him on that occasion?

The Witness: Yes, sir.

The Court: Now, what was the conversation you had with him?

The Witness: Well, I had told him that I had just come out on bail and I had seen Ralph Russano down there and all the fellows that were in on this case——

Mr. Kove: If your Honor pleases, may I on behalf of the defendant Anthony Carminati respectfully object to this testimony as being conversation testimony coming after the date of the arrest?

The Court: This testimony, I will emphasize again as I did yesterday when the witness testified to it on direct examination, members of the jury, (493) is being received only with respect to the

defendant Galgano who is the defendant with whom the witness alleges he had the conversation. In no single respect may it be considered insofar as any other defendant in the case is concerned.

All right.

The Witness: Well, I had met him in the trial and I told him that I just come out on bail and I saw all these people down there, and there was talk about Ralph, about the stuff being very bad, and Ralph told me he had got the stuff from Galgano, and I asked him why the stuff was bad.

Well, he said, when Ralph had got it the stuff was good, he didn't know what Ralph had done with it.

Mr. Fusco: May I continue, if your Honor pleases?

The Court: Is that the entire conversation?

The Witness: Well, about the narcotics, yes, sir.

The Court: All right, proceed.

Mr. Kove: May I take an exception, if your Honor pleases, to protect the record?

The Court: Yes.

Mr. Kove: As to whether that was the entire (494) conversation and the answer made by this witness. That is, I take exception to that and the answer made by this witness.

The Court: You may.

Mr. Kove: Thank you.

* * * * *

Thomas Dugan—for Government—Direct

(587) THOMAS DUGAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Lankenau:

* * * * * *

(618) Q. Did there come a time when you arrested Michael Galgano? A. Yes.

Q. Do you see Michael Galgano here in court today? A. Yes. I do. He is the second man to the left.

Mr. Lankenau: May the record indicate that the witness identified the defendant Michael Galgano.

Q. At the time of the arrest of Michael Galgano——

Mr. Fusco: May we have the date, if your Honor please?

(619) The Court: Yes. What date was that?

The Witness: November 19, 1956.

Q. At the time of the arrest of Michael Galgano, did you search the premises, the home of Michael Galgano? A. I did.

Q. What did you find?

Mr. Fusco: I object.

Mr. Fruchtman: Now, if your Honor please, I object to that on behalf of the defendant McKenney, because it is after the arrest of the defendant.

Mr. Lankenau: Now, this testimony is being offered only as against Galgano.

The Court: I take it that you are offering this testimony only with respect to the defendant Galgano.

Mr. Lankenau: That is correct, your Honor.

The Court: And, members of the jury, you will so understand it. It is not to be considered with reference to any other defendant on trial.

Q. Did you make a search of the premises in which Michael Galgano lived at the time of his arrest? A. I did.

Q. What did you find? A. I found about ten bankers envelopes.

Q. I show you Government's Exhibit 33 for (620) identification and ask you if you have seen these before. A. These are the bank envelopes I found on a table in the living room of Michael Galgano's home at the time of his arrest.

Mr. Lankenau: The Government offers at this time Government's Exhibit 33 for identification in evidence.

Mr. Fruchtman: As to whom?

Mr. Lankenau: As to Galgano.

Mr. Fusco: If your Honor pleases, I object on behalf of Michael Galgano on the ground that it is an inference based upon an inference. For that reason I object.

The Court: Overruled.

Mr. Fusco: Pardon?

The Court: Overruled.

(Government's Exhibit 33 for identification received in evidence).

Thomas Dugan—for Government—Cross

Mr. Lankenau: Your Honor, I wish to show these to the jury at some later time.

The Court: You may.

Mr. Lankenau: I have no further questions, your Honor.

* * * * *

(677) *Further Cross-Examination by Mr. Fusco:*

Q. Officer Dugan, or rather, Agent Dugan, you say on November 19 of last year you arrested Michael Galgano; is that true? A. That is true.

* * * * *

(678) Q. Did you take Michael Galgano to his home? (679) Did you go with him to his home? A. I arrested him at his home.

Q. And when you arrested him at his home, was anybody else there? A. Yes.

Q. Was his wife there, if you know? A. Yes.

Q. Did you see any children? A. Yes.

Q. How many children did you see? A. Two children.

Q. Now, I direct your attention——

Mr. Kove: If your Honor please, may we have an instruction that this line of examination applies only to the defendant represented by counsel who is conducting the questioning?

The Court: I have already stated so but I have no hesitancy in repeating it again to emphasize it, that all of this testimony with respect to this defendant Galgano as to incidents on November 19, 1956, is being received in evidence only with re-

spect to the defendant Galgano. It is similiar to the instructions I have given you previously, similar instructions with respect to other defendants.

(680) Mr. Kove: Thank you.

Q. I draw your attention to this exhibit.

Mr. Lankenau: May counsel state what the exhibit number is, your Honor?

The Court: Yes.

Q. No. 33, those envelopes. A. Yes.

Q. Now, Agent Dugan, when you went to the home of Michael Galgano——

Mr. Fusco: Withdraw the question.

Q. As to Exhibit 33, did you find that on a table in the living room? A. Yes.

Q. And did you then search his home? A. Yes.

Q. And did you find any glassine envelopes there? A. No.

Q. Did you search his Home carefully? A. Yes.

Q. Now, did you have a conversation with Michael Galgano pertaining to Exhibit 33? A. I asked him where he got them, where he got the envelopes.

(681) Q. And did he tell you you that those envelopes were used by his two children for banking money and for lunch money? Did he say that to you? A. Well, yes, or words to that effect.

Q. And you saw two children in the apartment, is that true? A. Yes.

Q. Now, did you relate to us Officer or Agent Dugan, all the pertinent conversations that you had with Michael Galgano pertaining to this matter?

Mr. Lankenau: Once again, your Honor, the Government objects to the form of the question.

The Court: Objection sustained.

Mr. Fusco: I respectfully except.

The Court: The witness will answer the questions that are put to him and not decide what is pertinent. He will answer the questions that are put to him on direct and cross.

Q. Now, Agent Dugan, did you talk to Michael Galgano about——

Mr. Fusco: Withdrawn.

Q. Did you show Michael Galgano a photograph? A. At one particular time I did.

Q. Yes, at any time in your conversation. (682) A. Yes.

Q. Did you show him a photograph? A. Yes.

Q. And I show you Government's Exhibit 16— A. Yes.

Q. —was this photograph, or a resemblance of this photograph shown to Mr. Galgano? A. Yes.

Q. And did you ask Michael Galgano if he had a conversation——

Mr. Fusco: Withdrawn.

Q. Now, the person that is represented in this exhibit, can you tell us who it is? A. Michael Botto.

Q. All right. Now, did you have a conversation with Michael Galgano pertaining to Michael Botto? A. Yes.

Q. And did you ask Michael Galgano if he knew the person represented in that photograph there? A. Yes.

Q. Now, did you further ask Mr. Galgano if on October 16, 1956, if he had a conversation with that person represented in that photograph? A. Yes.

(683) Q. And did Michael Galgano say to you that he had a conversation and it looks like the person that is there but wasn't quite sure because he had a hat on at the time? Did he say that? A. Well, this was at—I told him at the time we had that conversation Mr. Lankenau was doing the questioning, and I was present, and as I recall, a statement—while this statement was being taken, he stated that he did not know Michael Botto, or that he could not be sure of who he was.

Q. Did you then have a conversation with him, Agent Dugan, pertaining to someone talking to him on October 16, 1956, at the Delmont Bar and Grill? A. Yes.

Q. And did he tell you that person had a conversation with him about narcotics and that he threw him out of th restaurant? Did he tell you that? A. I believe he mentioned something about throwing someone out of the bar.

Q. Now, did he also tell you that on the day in question there was a barmaid present at the Delmont? A. I don't recall whether he did or not.

(684) Q. Now, did you ask him where he got the blank envelopes, represented by United States Government Exhibit 33? A. Yes.

Q. And did he tell you that occasionally since his brother is a porter at the Delmont Restaurant he banks money for the Delmont Restaurant and Bar at the Bankers Trust? Did he say that to you? A. No, I believe he said that his children brought them home, that they had used them for school, or something like that, or the children had used them to take money to school.

I asked him where he got them, and, as I recall, he said his children brought them home.

Q. And then did you speak to the wife of Michael Galgano to see if that——

Mr. Lankenau: I object, your Honor, conversation——

Mr. Fusco: Let me finish.

The Court: Yes, let him finish his question.

Q. — if that wasn't the fact.

Mr. Lankenau: Your Honor, I object to the question.

(685) The Court: Sustained as to form.

Q. Did you speak to Mrs. Galgano in the presence of the defendant as to whether those envelopes were used by the children for school money and for lunch money? A. Yes.

Q. And did she say that they were so used? A. Yes.

Mr. Fusco: I have no further questions.

* * * * *

SUSAN CAPORASO—for Government.

Direct Examination:

* * * * *

(570) Mr. Fusco: Now, if your Honor please, I say to your Honor that this is improper rebuttal to bring in a statement of Michael Galgano at this time.

The Court: I think I stated earlier also to defense counsel when the question came to going (571) back on cross-examination, that if it was overlooked I will accept it even though it should have been offered in the direct case.

Mr. Fusco: I except.

By Mr. Lankenau:

Q. Do you see that man here in court today? A. Yes, I do. The second on the left in the brown suit (indicating).

Mr. Fusco: If your Honor please, may I raise an additional objection. There is nothing here on the part of the District Attorney that says that he overlooked anything in——

The Court: Why wasn't it offered——

Mr. Fusco: If I may just finish, so the record may be complete.

There is nothing here that the assistant United States attorney stated that shows that he overlooked the offering in evidence of this statement on his direct case, and as to your Honor's remarks, your Honor stated that if anything was overlooked—I don't remember your Honor saying it—that your Honor would permit it——

The Court: Now, first, let us not get into a discussion with respect to whether or not I have (572) indicated to counsel that if matters were overlooked I would permit it, and I am going to call upon counsel sitting at the defense table to state whether or not I did not make this point at some stage during the trial in the robing room.

Mr. Fruchtman: Yes, your Honor, you did. You permitted me to reopen my cross-examination because of something I overlooked.

The Court: After you had concluded and after there had been redirect examination.

Mr. Fruchtman: Yes.

The Court: Didn't I also state that the Court adopts a very liberal policy with respect to the introduction of evidence even though it was not in the regular order? So even though it was overlooked I will accept it, in the exercise of my discretion.

Mr. Fusco: I except.

The Court: Proceed, please.

Mr. Lankenau: May this be marked for identification.

(Marked Government's Exhibits 35, 36, 37 and 38 for identification.)

Q. Miss Caporaso, I show you Government's (573) Exhibit 36 for identification and ask you if you know what that is? A. Yes, that is my shorthand notes of the statement of Michael Galgano.

Q. I show you Government's Exhibit 37 for identification and ask you if you know what that is? A. That is a transcript of my notes.

* * * * *

(574) Mr. Lankenau: Your Honor, at this time I offer in evidence Government's Exhibits 36 and 37 for identification.

* * * * *

Mr. Lankenau: May the record indicate that the witness is now reading from Government's Exhibit 36?

The Witness: "Statement of Michael Galgano.

Discussion

"Before I ask you any questions, Mr. Galgano, I want to advise you of your constitutional right"—

The Court: Pardon me, Miss Caporaso. You know there is a court reporter here, and they (575) are the best in the country. You are going at quite a rate. So just take it easy.

The Witness: "Before I ask you any"——.

The Court: The jurors want to hear and I want to hear, too.

The Witness: "Q. Before I ask you any questions, Mr. Galgano, I want you to advise you of your constitutional right not to answer any of my questions. A. Yes.

"Q. Any answer you give or any statement you make can be used against you at the time of your trial. A. I know.

"Q. Do you understand that you don't have to answer any of my questions? A. That's right.

"Q. Are you married? A. Yes.

"Q. Living with your wife? A. Yes.

"Q. How old are you? A. 43.

"Q. Are you known by any other name? (576) A. Black Mike.

"Q. Any children? A. Two.

"Q. What ages? A. Seven, thirteen.

"Q. Any other dependents? A. No, sir.

"Q. Where do you live? A. 1191 Lakewood Place.

"Q. Do you own your own home? A. Yes, sir."

That is all I have.

Mr. Lankenau: I have no further questions of this witness.

Discussion

Mr. Fusco: I have no questions.
The Court: You may step down.

(Witness excused.)

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Mr. Kove: If your Honor please, at this point at the risk of being repetitious, instead of simply objecting on the ground that this is something that took place subsequent to the consummation of the (577) conspiracy and as obviously being a statement of a co-defendant, I do ask your Honor to repeat the instruction previously given with respect to this, whatever it might be.

The Court: First with respect to the testimony of the last witness, I do not recall that the date was given of the statement. If you will apprise me of the date I will rule.

Mr. Lankenau: Your Honor, the date of that statement was November 19, 1956.

The Court: Under the circumstances the Court again instructs the jury that that statement has been received in evidence only as against the defendant Galgano, whose statement it was, and in no respect can you consider it with respect to any other defendant in the case.

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(578) MILDRED ROTHENBERG, called as a witness on behalf of the Government, in rebuttal, being duly sworn, testified as follows:

* * * * *

(580) (In the robing room.)

The Court: Let the record indicate that counsel for the defendant Michael Galgano, after conferring with the assistant United States attorney, has agreed upon the questions to be read from the question and answer statement taken of the defendant Michael Galgano. Only these questions and answers are to be read to the jury, and all others are to be eliminated.

The Court on its own motion will eliminate any reference in an answer made to any defendant other than Galgano.

(581) Mr. Lankenau: So agreed.

Mr. Fusco: So agreed.

(In the courtroom in the presence of the jury.)

The Court: Are you ready to proceed?

Mr. Lankenau: Yes.

The Court: Mr. Fusco, we may excuse the witness Miss Rothenberg, may we not?

Mr. Fusco: Yes, your Honor, we can.

The Court: Members of the jury, I think you heard right before we took our luncheon recess that a further statement or part of the same statement was taken by Miss Rothenberg from the defendant Galgano; that she transcribed the questions that had been put to him and the answers that he gave. Instead of having her read from her notes the questions and answers that are to be read here or submitted to you, it will be read from the

typewritten statement, and it would be the same as if she read from her notes.

And, incidentally, this evidence now is being received again only as against the defendant Galgano and is not to be considered with respect to (582) any other defendant in the case.

Mr. Londin: "The witness, Michael Galgano, upon being shown Government's Exhibit 16, which is a picture of Michael Botto"——

Mr. Fusco: Could we have the time and place fixed, Mr. Londin?

Mr. Londin: November 19, 1956.

Mr. Fusco: Where?

Mr. Londin: At the office of Mr. Lankenau.

Mr. Fusco: Very good.

Mr. Londin: (Continuing) —"upon being shown this photograph of Michael Botto——

"Q. Do you know this man? A. No.

"Q. Did you ever meet him? A. I don't know him from the Bronx.

"Q. Do you know Mike Botto? A. No.

"Q. This was in the middle of October. Who is Blackie? A. Well, they call me Blackie.

"Q. But who was the Blackie that you said— A. I don't know, I never met him again. This fellow, he come in drunk, just come out of jail (583) and he was talking right to us.

"Q. Is Blackie any one of the men whose pictures I have shown you? A. No, sir.

"Q. Do you want to look through those pictures again just to make sure (shows witness same group of pictures shown before)? A. There is only four of them that I have seen before.

"Q. Do you know this guy Mike Botto? A. No.

Reading From Statement of Michael Galgano

"Q. Where does Blackie live? A. I don't know. First time I seen him. In fact, I am the only one they call Black Mike.

"Q. Have you seen this Blackie before? A. No.

"Q. What does he look like? A. Well dressed, sharp dresser, had money on him, he started buying drinks at the bar.

"Q. How tall is he? A. He looked shorter than I am, about five six I think.

"Q. Did he wear glasses? A. No.

(584) "Q. Full head of hair? A. Had a hat on.

"Q. How old? A. In the forties, the least. He looked older than me.

"Q. Have you ever seen this man Blackie before? A. No, never did.

"Q. Ever seen him since? A. No. He made a call at the bar and when I answered the phone he asked for me. That was the last he ever spoke to me. He said he had a bad record, and he was talking big, I don't know, so I got him by the collar and threw him out of the place."

The Court: Call the next witness.

Mr. Lankenau: The Government rests, your Honor.

The Court: Case closed on both sides.

* * * * *

(585) Mr. Fusco: If your Honor please, I move (586) similarly, as I have at the end of the prosecution's case, and move to have the indictment dismissed; and further, if your Honor please, alleging all the grounds that I did at the end of the prosecution's case, and further move for a directed verdict of acquittal on the grounds that the prosecution has failed to make out a case beyond a reasonable doubt.

The Court: Motion denied.

Mr. Fusco: I respectfully except.

* * * * *

(711) CHARGE OF THE COURT

The Court: Ladies and Gentlemen of the Jury: When you were first selected as jurors I told you that your principal function during the progress of the trial would be to listen carefully to the evidence and to observe the witnesses who testified. It has been evident to me that you have discharged this duty admirably well and have followed the testimony in the case with keen and absorbing interest.

We have now reached the point at this trial where you are about to enter upon your final function as jurors, and here you perform one of the most sacred obligations of citizenship—that is, acting as ministers of justice.

You are to approach your duties in a complete attitude of fairness and impartiality and to appraise the evidence calmly and deliberately—and as was emphasized by me when you were selected as jurors—without the slightest trace of sympathy, bias or prejudice for or against the Government or the defendants as parties to this controversy.

Let me add: the fact that the Government is a party, or that the prosecution is brought in the name of the United States of America, entitles it (712) to no greater and by the same token no less consideration than that accorded to any other party to a litigation.

The glory of our system of justice is that all, the rich and the poor—the powerful and the weak—persons of every race, color or creed, stand as equals before the bar of justice. Your final role is to pass upon and decide the fact issues that are in the case. You are the sole and exclusive judges of the facts. You determine the weight of the evidence, the credibility of the witnesses, and you determine and resolve such conflicts as there may be in the evidence, and you draw such reasonable infer-

ences as may be warranted by the testimony received in the case. I shall later refer to how you determine the credibility of witnesses.

My function at this point is to instruct you as to the law in the case and it is your duty to accept the law as I state it to you in these instructions and to apply it to the facts as you may find them.

The indictment in this case contains 14 counts—that is, 14 charges of violations of the federal laws by various persons.

(713) But we are concerned in this case with only four counts, the 3rd, 4th, 8th and 14th counts, and with only four defendants: Anthony Carminati, William McKenney, Jr., Frank Rich and Michael Galgano.

Under the 14th count these four defendants, as well as others, are charged with conspiracy to violate certain federal laws enacted in an effort to curb the sale and distribution of narcotics for illegal purposes.

The 3rd, 4th and 8th counts, so-called substantive counts, which are also before you, concern only the defendant Frank Rich. These charge that on the specific dates set forth therein he, Frank Rich, committed an actual violation of the narcotics law as distinguished from a conspiracy to violate the law.

Generally speaking, a substantive count charges a basic violation of the law, for example, in this case, under the 3rd and 4th counts, the illegal sale of narcotics and under the 8th count facilitating the transportation of narcotics.

The conspiracy count against the four defendants and the three substantive counts against (714) Rich are in some respects governed by different laws.

In a conspiracy charge there is no need to prove an actual violation of a specific criminal law, or the sale

and delivery, or the facilitation of the sale and delivery of narcotics.

For two or more persons to conspire or combine to commit, or cause to be committed, a breach of the criminal laws of the United States is an offense of grave character.

It is almost always characterized by secrecy, rendering detection difficult and requiring much time for its discovery. Because of this, a conspiracy to commit a crime is made by statute an entirely distinct offense, separate from the substantive crime itself. I shall later discuss the conspiracy and the substantive counts in detail.

The fact that one or more persons named in the indictment have pleaded guilty, and further that the indictment has been severed as to other defendants, may not be considered against the defendants on trial.

So, too, you are not to take into consideration that the grand jury named David Oglesby (715) and Abraham Schwartz and others as co-conspirators but did not indict them as defendants.

That must play no part in your deliberations, although you will, as I shall presently tell you, be required to pass upon and evaluate their credibility as witnesses upon this trial.

There are certain fundamental principles of law which apply in every criminal case, to some of which I referred at the time of your selection as jurors.

The indictment is merely an accusation—a charge. It is no evidence or proof of thee defendants' guilt. You will not give any weight whatsoever to the fact that an indictment has been returned against the defendants on trial. They have pleaded not guilty and they have put in issue the Government's charges.

The Government has the burden of proving its charges against the defendants beyond a reasonable doubt, which

is a burden that never shifts and remains upon the Government throughout the entire trial.

The defendants do not have to prove their innocence. On the contrary, they are presumed to be innocent of the accusations contained in the (716) indictment. This presumption of innocence continues in their favor throughout the entire trial. It was, as I told you at the start of the trial, in their favor then; is present during the course of the trial and is in their favor even as I speak to you now, and still continues in their favor during the course of your deliberations in the jury room. It is removed only if and when you, the members of the jury, are satisfied that the guilt of the defendants has been established beyond a reasonable doubt.

Now, the question that naturally comes up is what is a reasonable doubt? The words almost define themselves: that there is a doubt founded in reason, and arising out of the evidence in a case, or the lack of evidence. It means a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt which appeals to your reason, your judgment, your common sense, and your experience. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say (717) that you are not satisfied of the guilt of a defendant and that you do not have an abiding conviction of a defendant's guilt which amounts to a moral certainty, then you have a reasonable doubt and it is your duty to acquit. On the other hand, if after such an impartial and fair consideration of all the evidence in the case you can candidly and

honestly say you do have an abiding conviction of a defendant's guilt which amounts to a moral certainty, such a conviction as you would be willing to act upon in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt and under such circumstances it is your duty to convict.

Putting it more simply, if you were confronted with an important decision, and after reviewing all the factors that are pertinent, you are beset by doubt and uncertainty, and unsure of your judgment, then you would have a reasonable doubt. And, conversely, taking into account all the elements that pertain to the problem, you have no uncertainty, you are sure of your action and have no reservation, then you have no reasonable doubt.

Now, with the foregoing general instructions, (718) let us turn to the charges contained in the indictment.

I think it is desirable that we first consider the conspiracy charge since much of the testimony was directed towards it and the same evidence touches upon the substantive charges against the defendant Rich.

The 14th count of the indictment charges a conspiracy to violate specific provisions of the Internal Revenue Code which were enacted by the Congress in an effort to curb the illegal traffic in narcotics.

Thus Sections 4701, 4703, 4704(a), 4724(c) and 4771(a) of Title 26 of the United States Code, sometimes referred to as the Harrison Act, make it an offense to sell or distribute narcotics except from an original container to which are affixed revenue stamps; and also make it illegal for one to sell or distribute narcotic drugs without registering with the Secretary of the Treasury for that purpose.

Then there are Sections 173 and 174 of Title 21 of the United States Code, known as the Jones-Miller Act, which make it a crime to import a narcotic (719) drug into the

United States contrary to law, or to receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment or sale of any such drug after importation—knowing the same to have been imported contrary to law.

These are the laws which the Government charges the defendants conspired to violate.

Thus Count 14 of the indictment charges:

1. Commencing on or about the 1st day of January 1951 and continuously thereafter up to and including the day of the filing of this indictment, in the Southern District of New York, Salvatore Russano, Ralph Russano, Anthony Carminati, William McKenney, Jr., Frank Rich, Robert Guippone, Joseph Ambrosini, Carlos Ruiz, Mary Lou Brolet Russano, Sebastian Della Universita, Michael Botto, Michael Galgano, David Shackelford, Donald Bauer and Ada Volkell, the defendants, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together with John Sciarra, David Oglesby, Irwin Greenspun, Vicki Cratty, Freddie Cratty, Abraham Schwartz, Carrenza M. Howard, Daniel Murphy and "John Doe" also known as (720) Wilson, white male, blonde hair, 30-35 years of age, approximately 5 feet 11 inches tall and 180 pounds weight, named herein as co-conspirators, but not defendants, and with others to the grand jury unknown to violate the United States Code, Title 26, Sections 4704(a), 4701, 4703, 4724(c) and 4771(a), and Title 21, Sections 173 and 174.

Those are the sections to which I made reference in substance which the defendants and others are charged with conspiring to violate.

Now the indictment continues:

2. It was part of the said conspiracy that the said defendants unlawfully, wilfully and knowingly would sell, dispense and distribute a quantity of narcotic drugs, the exact amount and nature thereof being to the grand jury unknown, in that the said narcotic drugs would not be in the original stamped package or from the original stamped package, that is to say, that there would not be affixed to the container in and from which the said defendants would sell, dispense and distribute the narcotic drugs as aforesaid any United States (721) Internal Revenue Stamps, as required by the various sections to which I have referred of the Internal Revenue Code.

3. It was further a part of said conspiracy that the said defendants, being persons who had not registered and who had not paid the special tax provided for by Sections 4702(a), 4721 and 4722 of Title 26, United States Code, unlawfully, wilfully and knowingly would have in their possession and under their control a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, in violation of Section 4724(c) of Title 26, United States Code.

The indictment further alleges that:

4. It was further a part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would receive, conceal, sell and facilitate the transportation, concealment and sale of the aforesaid narcotic drugs, after the said narcotics drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported (722) and

brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

Now, the indictment continues with the overt acts and the first overt act is as follows:

In pursuance of said conspiracy and to effect the objects thereof, on or about the 1st day of April, 1955, in the Southern District of New York, in the Cafe Expresso, 180th Street and Arthur Avenue, Bronx, New York, Robert Guippone, Ralph Russano, Salvatore Russano and Michael Botto met.

I should now tell you that in all there are 23 overt acts alleged in this indictment, some of which refer to various persons as alleged conspirators, some defendants, and others only named as co-conspirators, either meeting and having talked, and in some instances the overt act alleges a sale or possession of narcotics. I am not going to read all of the 23 overt acts. I will hand you a copy of the indictment which contains them, but I shall make reference to the overt acts and their significance insofar as the conspiracy charge is concerned.

(723) This indictment is bottomed upon Section 371 of Title 18 of the United States Code, the conspiracy statute, which makes it an offense if two or more persons conspire to commit any offense against the laws of the United States, and one or more of such persons does any act to effect the object of the conspiracy.

Putting it another way—the defendants are not charged with violations of the Harrison Act or the Jones-Miller Act—those would be substantive violations. They are charged under the 14th count with a conspiracy to violate those laws.

Now, what must the Government establish to prove a conspiracy? The essential elements of the crime of conspiracy are:

(1) The existence of the conspiracy as charged in the indictment;

(2) That a defendant knowingly associated himself with the conspiracy;

(3) The commission of at least one of the overt acts set forth in the indictment.

(724) Before a conviction may be had against a defendant, the Government must establish each essential element beyond a reasonable doubt. If it fails, you must acquit; if it succeeds, your duty is to convict.

What is a conspiracy? A conspiracy is a combination or agreement of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose, not in itself criminal or unlawful, by criminal or unlawful means.

In this case the Government contends that the conspiracy was to accomplish an unlawful purpose.

The gist of the crime is the unlawful combination or agreement to violate the law. A conspiracy has sometimes been called a partnership in criminal purposes. However, it is not necessary that two or more persons should meet together, and enter into a formal or written agreement stating that they have formed a conspiracy to violate the law, or the details of the plan or the means by which the unlawful project is to be carried out.

Indeed, it would be extraordinary if there were such a formal agreement. When men, in fact, enter into a plan of that character, much is left (725) to unexpressed under-

standing. Conspirators do not put their statements in writing, nor do they make their plans public.

It is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to accomplish an unlawful design, knowing its object.

From its very nature, a conspiracy is almost invariably secret in its origin and execution. In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged co-conspirators which are done to carry out an apparent criminal purpose. The adage "Actions speak louder than words" is applicable here.

The offense is complete when the unlawful agreement is made and any single overt act to effect the object of the conspiracy is thereafter committed by at least one of the co-conspirators.

An overt act is any step, action or conduct which is taken to achieve, accomplish or further the objectives of the conspiracy.

The prosecution is not required to set forth in the indictment each and every act upon which it relies to establish a conspiracy or a defendant's (726) participation therein. Neither is the prosecution required to, although it may, prove each of the overt acts set forth in the indictment. Indeed, in this case it has not undertaken to prove all of them. The overt act need be neither a criminal act nor the very crime that is the objective of the conspiracy.

Thus in this case of the 23 overt acts only six charge the sale of narcotics, and the remainder refer to conversations and meetings between or amongst various alleged co-conspirators.

For persons to engage in conversation and to meet of course is not illegal or criminal in and of itself. But

when, as the Government charges, such talks and meetings are for the purpose of furthering the objectives of the conspiracy, then such overt acts or conduct become an element of the crime.

Thus if alleged conspirators meet and discuss the sale, purchase or delivery of narcotics to carry out their illegal objective, or make telephone calls for such purposes, as the Government contends they did on various occasions, that is not innocent talk; it is an overt act in carrying out their criminal (727) purpose.

But, as I have already noted, apart from the foregoing, the indictment itself charges a number of sales and deliveries, including those by Rich on or about the 23rd and 28th of June 1956.

Incidentally, the fact that the overt act is alleged to have occurred on or about the 28th of June and the testimony indicates that in fact, if you do believe it did occur, it was made on the 29th day of June, does not matter.

The same would be true with respect to other overt acts. If you find they occurred on or about the day specified, that would be sufficient.

And so, too, you will recall that in reading the indictment at the very beginning there is a reference to the conspiracy having started some time in 1951. Actually the testimony, if believed by you, would indicate that it started some time in 1955. Again that would not matter if upon these instructions you find a conspiracy existed.

The overt act essential to sustain a conspiracy prosecution need not implicate all the conspirators, nor is it required that each participate, for the act of one conspirator done in furtherance of the (728) conspiracy becomes the act of all.

Neither is it necessary for the Government to prove that each defendant committed a particular overt act, nor

is it required to allege overt acts on the part of each member of the conspiracy.

The guilt of a conspirator is not governed by the extent or duration of his participation. Some may take major parts while others play minor roles. A conspirator need not have originally conceived the conspiracy nor have participated in it from its inception; nor taken part in every step or action in its furtherance; nor is it required that he have knowledge of all its operations.

Even if one entered the conspiracy after it was formed, or if he engaged in it to a degree more limited than that of his co-conspirators, he is equally culpable so long as he was in fact a conspirator.

In a word, he may join at any point in its progress and be held responsible for all that has been done or may be done during its progress.

Simply stated, using the partnership analogy again, by becoming a partner he assumes all the liabilities of the partnership, including those (729) that occurred before he became a member.

Thus, in this case for example, according to Schwartz, he had his first contact with Rich and Botto about May 1956, following which he undertook to buy and sell narcotics.

If in fact you find that a conspiracy existed going back to June 1955, and that Schwartz joined it in May 1956, he would be equally responsible with all other conspirators for all that was done in furtherance of the conspiracy before as well as after his joining.

The law presumes once it is established that a person is a member of a conspiracy, that he continues his membership therein until its termination, and the burden is upon the conspirator to satisfy you by affirmative proof that he withdrew and disassociated himself.

It is not required that all co-conspirators know one another. Again that does not matter if you should find one knowingly joined the conspiracy during its existence.

For example, if you find that one sold or supplied heroin to another knowing that it will be resold, the fact that the original supplier did not (730) know the person to whom the drug was resold, or the ultimate consumer, does not matter.

It is enough that the original supplier of the heroin knowingly joined the conspiracy, participated in it and acted to further the ends of the conspiracy—the overall conspiracy to buy, sell and distribute drugs, if you find that such a conspiracy did exist.

If you find that in fact there was an original supplier who sold to a middle man who in turn sold to an ultimate user or consumer, then each—supplier, middle man and user—was a link in the sale and distribution of narcotics; and if the evidence warrants it, you may find that all of them were engaged in an illegal venture in which each played a role upon which the success of the whole venture depended and their knowingly participating in the conspiracy; that is, if they knowingly participated in the conspiracy then each is guilty. In these circumstances it matters not that the supplier did not know the user.

You are not to judge the character and effect of the conspiracy by dismembering it and viewing its separate parts, but only by looking at it as a (731) whole. You must first determine from all the evidence in this case whether or not a conspiracy as charged in the indictment existed.

It is sufficient, if from proof of all the relevant facts and circumstances, you find beyond a reasonable doubt that the minds of at least two alleged co-conspirators met in an understanding way so as to bring about a deliberate agreement to do the act or acts as charged in the indictment.

Charge of the Court

If you conclude that a conspiracy did exist, you must determine next as to each defendant whether or not he was a member of the conspiracy. In considering whether or not a defendant on trial was a member of the conspiracy, you must do so without regard to, and independently of, the statements, acts or declarations of others.

On this subject, a special word. You will recall, and I underscored it several times, that the acts and statements made by one alleged co-conspirator in the absence of other defendants or alleged co-conspirators were received in evidence on a conditional or tentative basis. This applies to testimony given as to various acts or statements (7332) allegedly made by the defendants on trial, as well as those of Russano and other alleged co-conspirators. Such acts, declarations, or admissions were received at the time in evidence against the particular person making them. However, with respect to the absent defendants, such testimony was received subject to independent proof of the existence of the conspiracy, and such absent defendant's knowing participation in the conspiracy.

In other words, the alleged participation by a defendant in the conspiracy cannot be established against him by the acts and declarations of any of his alleged co-conspirators done or made in his absence. A defendant's connection with the conspiracy must be established by independent proof based upon the reasonable inferences to be drawn from such defendant's own actions, his own conduct, his own statements or declarations, his own connection with the actions and conduct of the other alleged co-conspirators.

Each defendant's acts and declarations may be evidence of his own connection with the conspiracy, and the conspiracy may be proved by the sum (7333) total of the

independent acts and declarations of all of the alleged participants.

However, once you are satisfied beyond a reasonable doubt that a conspiracy existed and that a defendant on trial was a member of the conspiracy, using the test of independent proof I have described, then the acts and declarations of any one of the other persons whom you may find was also a member of the conspiracy, made during the pendency of the conspiracy and in furtherance of its objectives are considered the acts of all the others, even though they were not present.

Summing it up in a simple way, if there was in fact a partnership in crime, then any act or statement or declaration of one partner in furtherance of the partnership's purposes becomes and may be considered the act or statement of all the partners.

Well, to make the subject more specific, and only by way of example, if you should find a conspiracy existed, and that the Russanos were members of the conspiracy, then if you find that the Russanos sold heroin to Botto and Oglesby as they testified, and also made statements in (734) furtherance of the conspiracy, such statements or acts, if you find that they in fact did occur, would be binding not only on the Russanos but also on any other defendant, even though not present, if such defendant was a member of the conspiracy.

In this connection a word with respect to Oglesby and Schwartz. If you find, as the Government charges, that they were members of the conspiracy, then the same thing would be true even though they were not indicted as defendants, but named only as co-conspirators. As co-conspirators their acts and statements would be binding upon such defendants whom you may find were members of the conspiracy.

Charge of the Court

At this point I again emphasize my instructions repeatedly given during the trial; that is, that any statement made by a defendant subsequent to his arrest was received in evidence only as against and limited to that particular defendant. In no respect may you consider such evidence with respect to any other defendant. Again the partnership analogy applies. Since an alleged partner's participation in the conspiracy would end with his (735) arrest, he could only speak and act for himself.

The law recognizes two types of evidence; direct and circumstantial, upon which jurors may rely to find an accused guilty of crime. The basic distinction between direct and circumstantial evidence is that in the former instance the witnesses testify directly of their own knowledge as to the facts to be proved. Direct evidence is where a witness testifies to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses.

In the case of circumstantial evidence, proof is given of facts and circumstances, from which one may infer other connected facts, which reasonably follow in the common experience of mankind.

Stated somewhat differently, a circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts, which have a logical tendency to lead the mind to a conclusion that the facts exist which are sought to be established. Such evidence, if believed is of no less value than direct evidence, for in either case you mu t be convinced beyond a reasonable doubt of the guilt of the defendants.

(736) Now, one simple example perl aps will illustrate what is meant by circumstantial evidence. Assume that when you had entered this courtroom early this morning

the sun was shining brightly, we know it was not raining, and assume the shades had been drawn all day long and none of us had gone outside. Now, if at this moment somebody walked into this courtroom with his coat covered with snow, while actually we did not see the snow because the blinds had been drawn all day, it certainly would be a logical inference that it was snowing at some time during the day although when we entered the courtroom the sun was shining.

It is not required that the conspiracy be established by direct evidence. Indeed, it is rarely susceptible of proof by direct evidence. The agreement of conspiracy is generally a matter of inference, deduced from the acts of the persons accused, which are done in furtherance of an apparent criminal purpose. A conspiracy and a defendant's participation may be inferred from such facts and circumstances in evidence as logically tend to sustain that inference.

(737) In this case the Government relies upon both direct and circumstantial evidence. With respect to circumstantial evidence, if the reasonable inferences to be drawn from the evidence lead to two conclusions—one favoring guilt and the other favoring innocence—then it is your duty to accept that which favors innocence.

To find any defendant guilty of conspiracy, you must find that he actively participated therein. Mere knowledge of an illegal act on the part of any alleged co-conspirator is insufficient. So, too, mere association of one defendant with another does not establish the existence of the conspiracy.

The Government must establish beyond a reasonable doubt that each defendant entered into the conspiracy with a specific criminal intent; that is, with a bad motive and with a deliberate purpose to violate the law.

The question of wilful intent is one of fact. Clearly it concerns what is in one's mind and the purpose which motivates him in his course of conduct. Medical science has not yet devised an instrument to record criminal or wilful intent. It is a mental process, an attitude. Obviously (738) direct proof of it is not available.

Intent and motive are determined from the acts, conduct and circumstances, and such inferences which may reasonably be drawn or arise from a combination of acts and circumstances.

If you find circumstances of secrecy, intrigue or deviousness, or attempts to conceal the real nature of a transaction, you may consider them along with the other evidence in the case.

With these general principles as a guide, you will approach the important questions of whether the prosecution has proved beyond a reasonable doubt the existence of the conspiracy alleged in the indictment, and if such conspiracy did exist whether a defendant on trial was a party to it, and whether he entered into it with knowledge of its nature and purposes.

There has been much testimony which, from its very nature, has spread out in different directions. Some of the testimony is of course applicable to the substantive counts which I shall presently discuss.

I think it desirable so as to bring the evidence within the framework of the charges contained (739) in the indictment, to review the testimony in broad outline and in particular, insofar as it pertains to each defendant.

To establish the conspiracy and the participation therein by the individual defendants on trial, the Government relies in the main upon the testimony of David Oglesby, Michael Botto, Abraham Schwartz, and Narcotic Agents Johnson, Giorgio and Dugan.

Botto, who is named as a defendant, has as you know pleaded guilty.

Oglesby and Schwartz are named as co-conspirators but not as defendants.

Salvatore Russano and Ralph Russano, two defendants named in the indictment as co-conspirators with the defendants on trial, appear to be at the center of the conspiracy charged.

According to the testimony given by various witnesses called by the Government, the Russanos engaged in extensive sales and dealings in narcotics over a period of time and one or more defendants are charged with specific conduct which the Government contends establishes their participation in the claimed conspiracy.

(740) Oglesby testified that from June 1955 and through the following year, he purchased heroin from the Russanos, each of whom he identified in the courtroom, about once a week, or every ten days; that in all he bought 40 or 50 ounces for which he paid $600 an ounce on the average for pure stuff. Oglesby you will recall used the word "stuff" interchangeably with the word "heroin."

Botto also testified that commencing about June 1955 and for almost a year thereafter, with some interruption because of a dispute as to quality, he too bought heroin from the Russanos, on the average of one or two ounces a week, at $300 for cut stuff.

Agent Johnson testified that he was introduced by Oglesby to the Russanos; that on August 20, 1956 he purchased from them an ounce of heroin which, as directed, he picked up from the cushion of a car which Sal Russano had driven to the Cosmos Restaurant; that the outer envelope was a Bankers Trust envelope in which was a glassine case.

Agent Dugan gave testimony which tended to corroborate Johnson and Oglesby's testimony as to events on August 20th.

(741) A chemist testified that the contents were heroin.

The Bankers Trust Company envelope is Exhibit 7 in evidence, and is similar to Exhibit 18, an envelope picked up at John Sciarra's home following Schwartz's arrest on June 29, 1956, who claimed he received it from Rich that day. Within this envelope was a glassine envelope, the contents of which a chemist testified was heroin.

Government's Exhibit 7 is also similar to Exhibit 33, the twelve Bankers Trust envelopes which Agent Dugan found on a table in the defendant Galgano's home when he was arrested.

Agent Dugan also testified that on August 22, 1956 he and Agent Coxe had the Delmont Bar under surveillance; that he observed the defendant Anthony Carminati engage in a conversation with Ralph Russano; that thereafter the Russanos drove to a building at East 180th Street; that one of the Russanos entered the building and returned in a few minutes, following which they drove to La Fontaine Avenue, where Frank Rich, a defendant on trial, emerged from a car, had a conversation with those in the Russano car, with his head and upper part of his body in the car; (742) that this lasted a minute or two, following which Rich re-entered his car, and thereafter there was the chase and the smash-up; and also the finding of the envelope in the rear of the smashed car, the contents of which have been testified to as containing heroin.

In broad outline, this series of continued transactions by Oglesby and Botto with the Russanos, and the incidents I have referred to, as well as other testimony I

have not mentioned, touching upon the defendants and alleged co-conspirators, is relied upon to establish a conspiracy to violate the narcotics laws.

Now let us turn to evidence offered by the Government to support its charge that the individual defendants were members of the conspiracy.

First as to Carminati: Oglesby testified that some time in October 1955 while at John's Bar at Third Avenue and 180th Street in the Bronx, three men entered and engaged in conversation with the Russanos, and he heard Ralph and these men talk about "three pieces." Oglesby testified that in the jargon of the narcotics world, a "piece" means (743) an ounce of narcotics.

That thereafter Ralph telephoned and soon a fellow came in and talked with the three men; that later that night, as arranged, he made a purchase of an ounce of heroin from Ralph Russano for $600.

Several nights later the same three men entered the restaurant, again talked with the Russanos, following which Ralph Russano made a telephone call; that he, Oglesby, saw one of the men throw seven quarters on the bar; that a man entered and asked "What's happening; three the other night and seven tonight. What's happening to these guys"? He later knew this man as Little Tony, whom he identified in this courtroom as the defendant Anthony Carminati.

Oglesby testified to other incidents involving Carminati. Thus he swore that in November 1955 at a luncheonette at Park and Tremont Avenues he asked the Russanos for an ounce of heroin; that soon Tony, the defendant Carminati, and a man named Angelo, entered and conversed with the Russanos, following which he was told by Ralph Russano he would receive a call; later that night Ralph

Russano (744) delivered to him 2 ounces of heroin for which he paid $1100.

Oglesby claims that subsequently in December 1955 at the Cosmos Bar, he had direct contact with Carminati. This came about when he demurred to the Russanos' suggestion to buy seven ounces of cut or diluted heroin instead of pure heroin.

Ralph Russano then said he would see what he could do and made a phone call, and soon the defendant Carminati entered the restaurant and he, the Russanos and Oglesby conferred and finally Carminati told Oglesby "I'm sorry, Big Boy, you'll have to take seven ounces of cut stuff." Oglesby claims he still refused to buy the cut stuff and the Russanos arranged to borrow an ounce of heroin.

Later in June 1956 Oglesby testified that when he wanted two ounces of heroin on consignment, because he was short of funds, the defendant Carminati told Ralph Russano, of whom the request had been made, not to close the transaction on that basis because Russano would be putting himself in the middle.

In all, Oglesby claims he saw or talked to (745) Carminati on some four occasions.

And then there is the testimony of Agent Dugan having observed Carminati engage in conversation with Ralph Russano on August 22, 1956 outside the Delmont Bar, to which I have already made reference.

It is upon this evidence that the Government contends it has established Carminati's participation in the conspiracy.

Charge of the Court

Now, as to the defendant McKenney:

To establish McKenney's participation in the charged conspiracy the Government relies upon the testimony of Oglesby, Botto, Agents Dugan and Giorgio.

Oglesby says he met or saw McKenney, whom he originally knew as Rocky, in March or April 1956 while talking with Ralph Russano; that in August 1956 after attempting to arrange for the purchase of narcotics by Agent Johnson from Ralph Russano, the latter said he was not in a position to close the deal, but he would call Rocky, the defendant McKenney, to handle the matter; that he, Oglesby, met the defendant McKenney at 176th Street and Broadway and told him that because his friend had made another purchase his money was tied up; that they (746) arranged to meet the next day, but never did meet.

Oglesby further testified that in August 1956 at the Cosmos Restaurant, Sal Russano in the presence of McKenney said that he, Russano, would have to let matters cool off for a while and take things easy, but that in the meantime McKenney would take care of matters.

Botto also gave testimony as to McKenney. His testimony is that on or about October 18, 1956, outside of a courtroom in this building he met McKenney together with a defendant not now on trial, Mary Lou Brolet Russano—referred to as Pat Russano;

That on this occasion Pat Russano asked if he needed stuff and to meet her at 10 that night and she would arrange a connection;

That in the company of Agent Giorgio they did have an original meeting that evening and later in an Italian restaurant McKenney stated that Sonny Della Universita

wanted to buy an ounce but he refused to sell it to him because he didn't have enough money.

Agent Giorgio also testified with respect to McKenney on the evening of October 18th and events earlier that day. (747) The agent swore that outside the courtroom he heard McKenney ask an unidentified person if "Uncle Tony" still had the stuff, to which she replied she didn't know, but he insisted that it must still be there.

Giorgio further testified that on that evening he and Botto met McKenney and Pat Russano at a pizzeria and after Sonny Della Universita, named as a defendant and co-conspirator, had left, he, McKenney, said, "how do you like that; he was trying to score with us and had only $200, not $300."

Incidentally, I again emphasize instructions repeatedly given during the trial, that this testimony was received only as against the defendant McKenney and any statements or acts of McKenney on this occasion may not be considered by you with respect to any other co-defendant or alleged co-conspirator on trial.

Similar instructions, of course, are applicable to situations involving other defendants, as I mentioned at the time the evidence was given.

Now, let us turn to the evidence offered by the Government with respect to the defendant Rich:

(748) Here the Government contends that it has established his participation in the conspiracy principally through the testimony of Botto, Schwartz and Dugan.

Botto testified he met the defendant Rich, whom he knew as Richie, in July or August 1955, at which time they discussed narcotics, and Botto asked Rich to take care of his, Botto's, night customers; that Rich did this

for about a month and was paid a weekly sum for his services; that thereafter Rich became Botto's partner; that Botto introduced Rich to the Russanos and arranged to buy an ounce of heroin from them; that thereafter he and Rich made various purchases from the Russanos; that with some interruption due to the quality of the drugs, they bought one or two ounces of heroin a week until June 1956.

Botto also testified that he and Rich sold cut stuff to one Donald Bauer at $100 an ounce on the average of once a week from November 1955 to June 1956.

Botto further testified that while in prison in January 1956 he met Johnny Sciarra who came around in April 1956 and asked to be set up in the dope (749) business; that he introduced Sciarra to Rich and the latter discussed narcotics; further that Rich told him while he was in prison Rich and Shackelford worked together; and it was arranged that Shackelford should continue to work for them at $100 a week. Shackelford, according to Botto, held the narcotics and sold to customers.

Later in March 1956 when Rich was in Connecticut, Botto and Shackelford worked together and that thereafter all three continued in business in April 1956 upon Rich's return from Connecticut.

Botto also testified Rich told him some time in August 1956 that after making a purchase of an ounce of heroin from Ralph Russano, narcotics agents stopped him, Rich, and in backing up his car to get away from them he crashed into an el pillar.

Schwartz testified in substance that he met both Rich and Mike, who he identified as Botto, through Johnny Sciarra;

That Rich told them he wanted to give up selling to users; that Schwartz and Johnny Sciarra arranged to go into the narcotics business and to buy their supply from Rich, who also was to transfer (750) customers to them; that in fact Rich thereafter introduced him to Freddie and Vickie, who allegedly were users.

According to Schwartz, he and Sciarra made two purchases from Rich, one about the third week of June 1956 and the second purchase on June 29, 1956.

Incidentally, the first purchase is made the basis of one substantive count (Count 3) and the second purchase the basis of another substantive count (Count 4) of the indictment against Rich.

Schwartz further testified that the first purchase made from Rich was cut or diluted and thereafter some six or seven sales of the cut narcotics were made by him and Sciarra to Freddie and Vickie, the customers they claim they acquired from the defendant Rich.

Agent Dugan gave testimony also as to Rich, and I have already made general reference to events on August 22, 1956, when, according to Dugan, the car driven by Rich crashed into the elevated pillar and when Rich managed to get away.

The heroin which Dugan testified was found in the rear of the car by Patrolman Costello is made (751) the subject of another substantive count (Count 8) against Rich.

Miss Virgit Young testified that Rich told her he was chased by officers and his car crashed into a pole; further that he also told her that he and Botto, whom she identified from Exhibit 16, used to be partners.

With reference to Galgano, the Government offers the testimony of Botto and Agent Dugan.

Botto testified that he met Galgano in July or August 1955 when he was introduced as Black Mike by Ralph Russano. The Government points to Galgano's admission in a statement made to an assistant United States attorney, that he was known as Black Mike.

Botto testified that on or about October 16, 1956 he had a conversation with the defendant Michael Galgano at the Delmont Bar, at which time he complained about the quality of the drugs he was buying from Ralph Russano at $400 an ounce; that Russano had told him he was getting the stuff from Galgano; that thereupon the defendant Galgano said when he gave the stuff to Ralph Russano it was good, and he didn't know what Russano did with it.

(752) The Government also relies upon the Bankers Trust Company envelopes seized at the Galgano home upon his arrest as circumstantial evidence to support its charge of Galgano's participation in the conspiracy.

The Government also stresses the denial by Galgano when questioned by Dugan upon his arrest that he knew Botto;

his repetition of his denial before the assistant United States attorney, and his denial that he recognized Botto when shown Government's Exhibit 16.

An exculpatory of false statement, for example a denial by one defendant that he knows another, if in fact untrue, is circumstantial evidence from which consciousness of guilt or criminal intent may be inferred. However, this may not, in and of itself serve as a substitution for other proof. It may be considered by you as lending strength to other and more tangible and more direct evidence.

That is the essence of the Government's case both with respect to the conspiracy and alleged participation by individual defendants.

The defendants, to counter the Government's (753) case, in large measure point to the fact that some of the principal witnesses called by the Government have extensive criminal records and by their own admissions were engaged in the very conspiracy charged in this indictment and, accordingly, they press the untrustworthiness and unreliability of the testimony so offered.

In addition they point to contradictions in the evidence offered by these witnesses, as well as what they contend are contradictions with the testimony of other Government witnesses.

Further, that a number of incidents relied upon to establish guilty knowledge or guilty conduct are as consistent with innocence as with guilt.

Also, the defendants rely upon the presumption of innocence as evidence in their favor.

In addition, the defendant McKenney called witnesses who directly challenged in particular the testimony of Government witnesses Botto and Giorgio as to events in this court house on or about October 18th.

Three witnesses—Eldio Guido, Sadie DeLissio, an aunt of the defendant McKenney, and his mother Vivian Piranni, all testified, and they are in (754) agreement that at no time was any statement made by the defendant McKenney to his aunt—in words or effect, asking if "Uncle Tony" still had the stuff, to which she replied that she didn't know, and that he insisted it must still be there. Here is a direct issue of fact as to what transpired. Incidentally, the witness Sadie DeLissio testified that her husband is known as Uncle Tony.

The defendant Galgano put in issue Botto's version that on October 16th at the Delmont Bar when he, Botto, claims that in answer to his question as to why the stuff he was

buying at $400 an ounce from Russano was bad, Galgano told him that when he gave the stuff to Ralph Russano it was good and he didn't know what Ralph did with it.

To support his challenge to this testimony, Galgano called Martha Bridges who was employed at the Delmont Bar as a bar maid. She testified that Botto, whom she identified from Exhibit 16, a photograph in evidence, asked for Mike; she went out to get Galgano, who was outside the bar; that he looked in and said he didn't know Botto; that soon Galgano entered through a rear entrance where Botto joined him; and that after drinks were ordered she heard Galgano (755) raise his voice, take Botto's money off the bar and order him to get out, take a taxi and go downtown where he belongs, and that Botto left.

Thus on the testimony of both the Government and the defendant's witness, Bridges, on this issue—Galgano and Botto did meet, but what is in dispute is what was said on the occasion.

You know that Galgano in his statement to the assistant United States attorney denied knowing Mike Botto and also denied that he knew the person appearing on Exhibit 16, which all counsel concede is a picture of Botto.

When questioned by the assistant United States attorney as to an incident at the bar on October 16th, Galgano said that not Botto but a person known to him as "Blackie" entered the bar, talked big and that he threw him out.

At the time of his arrest, according to Dugan, Galgano said with respect to such an incident that a person did have a conversation with him as to narcotics and that he threw him out of the bar.

It is for you to decide whether or not Botto and Galgano did in fact meet at the bar, and if they (756) did it is also for you to decide what was said or discussed. You ask

yourselves and decide whether Botto's statement is false or true. You ask yourselves whether Galgano's denial that he knows Botto or that he was present is false or true. You determine the issue.

As to the Bankers Trust Company envelopes which were found in his home and which are similar to a number in evidence, the defendant Galgano contends that no guilty inference is warranted. He points to Dugan's testimony that both Galgano and his wife told him their children used the envelopes for school money or lunch money. Thus he contends that no adverse inference is warranted and that the presence of the envelopes is as consistent with innocence as with guilt; that in fact they were there, as he contends, only for use by his children.

Now let us consider the substantive counts. As I have already noted, the testimony relied upon to establish the three substantive counts is in part the same as that relied upon to establish the three substantive counts is in part the same as that relied upon to prove Rich's participation in the conspiracy.

The first substantive count; that is, Count 3 of the indictment is based upon Schwartz's testimony (757) that about the third week in June 1956 in Central Park West, he and Sciarra purchased ½ ounce of heroin from the defendant Rich.

The second substantive count—Count 4 of the indictment—relates to the purchase of one ounce of heroin which Schwartz says they made on June 29, 1956, on which day they were later arrested.

And the third substantive count against Rich—Count 8 of the indictment—is based upon the testimony of Dugan that a package was found in the rear of the crashed car on August 22, 1956.

The Jones-Miller Act, to repeat, makes it a crime to import a narcotic drug into the United States contrary to law, or to receive, conceal, sell or facilitate the transportation, concealment, or sale of any such drug after importation, knowing the same to have been imported contrary to law. Thus you see the violation of the statute is not limited to a sale. It encompasses other activities. The essential elements of the offense are:

(1) the receiving, concealing, selling and facilitating the transportation of the heroin;

(2) that it was unlawfully imported;

(758) (3) that the defendants had knowledge of its unlawful importation.

Obviously also basic is a finding that the substance contained in the various exhibits relating to specific counts was in fact heroin, which I charge you as a matter of law is a narcotic drug.

A chemist has testified to the contents of some exhibits in evidence, and there appears to be no serious dispute as to the nature of such contents. However, since it is an essential element, you must also find beyond a reasonable doubt that the substance was in fact heroin.

The burden of proof with respect to these counts is always upon the Government to prove each essential element of the crime beyond a reasonable doubt. If it fails to do so, it is your duty to acquit; if it succeeds, it is your duty to convict.

I direct your attention to another provision of the Jones-Miller Act. You will recall that two essential elements of the offense charged are:

(1) that the heroin was unlawfully imported; and

(2) that the defendant had knowledge of the unlawful importation.

(759) It will occur to you that no direct evidence was offered by the Government that the drug was imported or that the defendant had knowledge of such importation. However, Section 174 of Title 21 of the United States Code, in the Jones-Miller Act, further provides:

> "Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

Thus under the law possession of narcotics gives rise to an inference that the narcotics were imported contrary to law, and a further inference that the person in possession had knowledge of such unlawful importation.

Again, you understand it is not necessary to show actual physical or direct possession by any defendant. Possession of any sort—either actual or constructive—is sufficient to raise the presumption under the statute which I have just read to you and to place upon the accused the burden of explaining the possession to the jury.

(760) If you find that Schwartz did make the purchases as he claims in June 1956 directly from Rich, obviously Rich to hand it over to him had to have possession, and absent any explanation you have a basis upon which to infer he knew that the drugs had been unlawfully imported.

With respect to the 8th count of the indictment relating to events on August 22, if you find that Rich was driving the car; that the heroin was found in the car; and that it was in the car when Rich ran from it; if you accept Agent Dugan's version of what transpired thereafter, you may draw an inference that he had possession of the heroin, even though it was found in the rear of the car.

Incidentally, and this also applies to the conspiracy count as far as Rich is concerned, if you accept Dugan's testimony that Rich fled when ordered to surrender to him as a Federal officer, you may consider this as circumstantial evidence of consciousness of guilt.

Now I have sketched in broad outline the evidence and contentions of the defense and prosecution. In making reference to the testimony of witnesses I have not attempted to touch upon all (761) the evidence or contentions of the parties, and my failure to note other evidence is no indication that it has been disregarded to that I am placing emphasis upon such testimony to which I adverted. My review of the evidence was to focus attention toward some of the issues and facts to be considered by you. All evidence in the case is important and must be considered by you in determining the issues.

In my discussion of testimony given by the witnesses I have attempted to state the same with complete accuracy. However, if your recollection of the evidence differs from mine, I repeat what I have said several times during the trial: it is your own recollection that governs and you must have no hesitancy, and I emphasize this as strongly as I can, in rejecting any reference by me to evidence which does not accord with your own recollection.

I have sought to avoid any comment which might suggest my personal views on the weight of the evidence, the

credibility of the witnesses, the inferences to be drawn, or the importance of one phase or segment of testimony as compared to another, and no comment made by me was intended to suggest any (762) personal view I may have.

As I told you when I questioned witnesses, the sole purpose was to clarify matters as to which testimony was given. These questions, as emphasized at the time, must not be considered in anywise as any indication of attitude with respect to the credibility of the witness. You are not to assume that I have any view as to the credibility of the witnesses or the guilt or innocence of the defendants.

The overruling or sustaining of objections, whether made by defendants' counsel or the Government counsel, is not to be taken by you as any indication of the guilt or innocence of the defendants. Counsel for the defendants not only have the right but it is indeed their duty, on the introduction or the offer of certain evidence, to present whatever legal objections there may be to its admission. So, too, in the instance of counsel for the Government. They are simply performing a duty on behalf of their respective clients.

Now out of the welter of testimony that we have had in this case you are called upon to determine the issues. How do you determine where the truth lies? In your search of the truth you are to be (763) guided by your plain, everyday common sense.

I frequently say to jurors when they enter the door of that courtroom and sit in the jurybox that they are not supposed to leave their common sense outside. You are all persons of experience, drawn from all walks of life. You determine a fact issue, involving whether a person is truthful, in substantially the same way you would determine that kind of question if you were called upon to

act in an important matter where you were personally involved.

You have seen the witnesses on the stand and observed their manner of giving testimony. The degree of credit that is to be given to a witness should be determined by his demeanor, his conduct, his relationship to the parties, his bias or impartiality, the reasonableness of his statements, and any motive to testify falsely, the strength or weakness of his recollection, viewed in the light of all other testimony, and the attendant circumstances in the case.

How did the witness impress you? Was he frank? Did his version appear straightforward and candid? Did he try to hide some of the facts? (764) Is the witness interested in the outcome of the case? Is there a motive to testify falsely?

In other words, what you try to do, to use the vernacular is to size a person up just as you would do, as I have said before, in any important matter when you were undertaking to determine whether or not a person is truthful, candid and straightforward.

Oglesby, Botto and Schwartz, who gave evidence upon which the Government relies, were by their own admissions participants in the alleged conspiracy.

In the eyes of the law they are accomplices in the crime charged against the defendants. In addition Oglesby and Botto have prior criminal records, the latter a rather extensive one.

In the prosecution of crime the Government is frequently called upon to use witnesses who are accomplices or persons with prior criminal records. Often it has no choice. After all, the Government must rely upon witnesses to transactions, such as they are. Otherwise, in many instances, it would be difficult to detect and prosecute wrongdoers.

And this is particularly so in cases of (765) conspiracy. Conspirators do not publicly proclaim their intentions, or operate in public. Conspirators necessarily are often secretive and devious in their activities, and clandestine in their meetings. Frequently it happens that only members of the conspiracy have evidence which is relevant to and important in the case.

There is no requirement in the Federal courts that the testimony of an accomplice be corroborated. Conviction may rest upon the uncorroborated testimony of an accomplice if you believe it and find it credible.

It should be pointed out, however, that the Government does claim corroboration as to portions of the accomplices' testimony. Oglesby, Botto and Schwartz have openly admitted their wrongdoing upon the witness stand. The fact that they have lived beyond the pale of the law, and by their own admissions have been accomplices in the very crime charged against these defendants, may be considered by you as bearing upon their credibility and the weight to be given to their actions.

However, it does not follow because a person has a criminal record, or has acknowledged participation (766) in the crime charged against the defendants, he is not capable of giving a truth version of what occurred. His testimony, however, should be viewed with great caution and scrutinized carefully.

Is their testimony against these defendants false? Is it made of whole cloth? Has it been inspired by animus against a defendant? Has it been induced by a promise that such testimony will bring them favorable consideration when they come up for sentence?

I take it it is fair to assume that any man who is up for sentence before a judge hopes that he will be treated leniently. You have a right to ask yourselves was the

testimony of any one of these accomplices deliberately untruthful and given in the hope that he would be treated leniently. If you find that it was, you ought unhesitatingly to reject it.

However, if after a cautious and careful examination of a witness's testimony and his demeanor upon the witness stand, you are satisfied that he told the truth as to certain events, then there is no reason why you should not accept it as credible and act upon it accordingly. On the other hand, as I have said, (767) if you are not satisfied that the witness has given a truthful version of events, then by all means you would be justified in rejecting it. I have just instructed you with respect to factors to be taken into account in evaluating the testimony of accomplices and persons with criminal records.

A number of witnesses called by the Government are employees of the Narcotics Bureau, some of the New York City Police Department, and other governmental agencies. The fact that they are such governmental employees does not mean that you are required to give greater weight to their testimony than to that of any other witness. The credibility of all witnesses is for you and you alone to determine, taking into account the interest of the witness, the motives, and other factors which may reasonably be considered to influence and color his testimony.

If you find that any witness—and this applies to all witnesses—has wilfully testified falsely to any material fact, you may reject all of the testimony of that witness, or you may accept such part or portion as commends itself to your belief as credible.

(768) The defendants have not testified in this case. That is their absolute right, and in no respect may such failure to testify be considered by you as any evidence against them or as a basis for any presumption or infer-

ence unfavorable to them. You must not permit such fact to weigh in the slightest degree against any defendant, nor should it enter into your deliberations or discussions.

The prosecution must prove the defendants' guilt by the required degree of proof, as already explained in these instructions.

Each count must be considered separately.

The case of each defendant must also be considered separately with respect to the count or counts of the indictment in which he is named.

Thus, in the case of the conspiracy count, there are various possible verdicts. You may find all the defendants not guilty; you may find them all guilty, or you may find one or more not guilty or guilty as the case may be.

So in the instance of the three substantive counts against Rich. You may acquit him on all; you may find him guilty on all, or you may find him guilty as to one or two counts and not guilty as to the (769) third and vice versa.

The verdict in each case must be unanimous.

Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and these instructions.

Under your oath as jurors, you cannot allow a consideration of the punishment which may be inflicted upon a defendant, if he is convicted, to enter into your deliberations or to influence your verdict in any way. The duty of imposing sentence rests solely with the Court.

Each juror is entitled to his or her own opinion, but each should, however, exchange views with his fellow jurors. That is the very purpose of jury deliberation: to discuss and to consider the evidence; to listen to the arguments of fellow jurors; to present your individual

views, to consult with one another, and to reach an agreement based solely and wholly on the evidence, if you can do so without violence to your own individual judgment.

Each one must decide the case for himself or herself after consideration with his or her fellow jurors. But you should not hesitate to change an (770) opinion which after discussion with your fellow jurors appears erroneous. However, if after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from others, you are not to yield your conviction simply because you are outnumbered or outweighed. Your final vote must reflect your conscientious conviction as to how the issues should be decided.

If in the course of your deliberations you require any of the exhibits, you may send out a note and they will be delivered to you.

I have in the course of these instructions when I discussed the matter of the overt acts stated that I would give you a copy containing the specific counts that you are called upon to consider.

Your oath sums up your duty and that is: without fear or favor to any man, you will well and truly try the issues between these defendants and the United States of America according to the evidence given to you in court and the laws of the United States.

You may now take the case and consider it in view of its importance and the gravity of the charge made in the indictment. It is important to the public (771) and it is also important to each of the defendants.

Now, I think that you may remain in the jurybox still without discussion as there may be some matters that counsel still want to see the Court about and, if so, we will go into the robing room.

(The following proceedings took place in the robing room between Court and counsel.)

The Court: Now with respect to the defendant Carminati.

Mr. Kove: I have one exception.

I respectfully except to that part of your Honor's charge wherein in discussing the testimony of Oglesby there was no reference made to the manner in which the testimony was given with respect to the identification of the defendant Carminati.

The Court: Any other exceptions?

Mr. Kove: No, sir.

The Court: That is a matter for the jury to determine.

Mr. Fruchtman: No exceptions.

Mr. Sweeney: No exceptions.

Mr. Fusco: I have none, but I have a request.

(772) The Court: The problem, of course, is that you never submitted any written requests in accordance with the rules, and about which matter I spoke to you heretofore.

Mr. Fusco: But here is a request that comes now after the matter is concluded, so that I could not possibly have submitted it before, as I did not know what the evidence was going to be.

The Court: What is your request?

Mr. Fusco: My request is this: if the jury disbelieves the testimony of Michael Botto as it pertains to Michael Galgano, that they must acquit.

The Court: Off the record.

(Discussion off the record.)

The Court: I will grant that request.

Mr. Fusco: Thank you, Judge.

Mr. Kove: I have another request, your Honor.

The Court: Let me say this for the record: I have asked counsel to get their requests into the Court and you have already submitted extended requests?

Mr. Kove: Yes, sir.

The Court: And I am not going to permit the making of requests now which should have been (773) submitted previously. The only thing I will permit you to put on the record is a request or requests which may relate to something contained in the instructions and which previously could not have been anticipated.

Mr. Kove: Very good, sir, and it is along that line. That is all I want.

The Court: Go ahead.

Mr. Kove: I want for the record now to show that I submitted this request to your Honor, and all the testimony was not yet in at the time.

The Court: I just stated what you can do and please go ahead and do it.

Mr. Kove: All right.

I respectfully request that the jury be instructed that if they do not believe the witness Oglesby they must acquit the defendant Carminati. That is all I have.

Mr. Londin: The Government would take exception to that, if I may be heard now.

The Court: Just hold that for a minute, as I am looking for my reference.

Mr. Kove: Yes, sir.

The Court: The Court declines to do so.

(774) Now, the reason I am going to issue further instructions with respect to the defendant Galgano is because if the testimony with reference to the events on October 16 were not in the case, I feel that I would have granted the motion to dismiss the indictment.

Mr. Fusco: Thank you.

The Court: However, I believe in the case of the defendant Carminati that the situation is entirely different as there is other evidence in the case.

Mr. Kove: I respectfully except.

(At this point the proceedings terminated in the robing room and the following proceedings took place in open court before the jury.)

The Court: Members of the jury: with respect to the defendant Galgano, if upon review of the evidence you do not believe or accept the testimony of the witness Botto who related conversations that allegedly took place in the Delmont Bar on October 16, then I instruct you under that circumstance if you do not believe Botto's story with respect to that evidence you should find the defendant Galgano not guilty.

(775) Mr. Fusco: Thank you.

Now I understand that one of the jurors has a question and I think, Mr. Juror, you had better submit it up here because it may present problems. If you do not have a piece of paper there or a pad the clerk will submit it to you.

Juror No. 5: I will write it out and hand it to the clerk.

The Court: Yes.

(Juror No. 5 hands note to clerk who in turn hands it to the Court.)

The Court: There is no evidence as to that in the case.

All right, you may proceed, Mr. Clerk. Let the marshals be sworn.

(Marshals sworn.)

The Court: Now, ladies and gentlemen of the jury, before you go inside let Juror No. 5 come up, please.

Discussion

(The Court confers with Juror No. 5 privately out of the hearing of counsel and jury.)

The Court: All right, you may go back and take your place.

(Juror No. 5 resumes his seat in jurybox.)

(776) The Court: Members of the jury: I did not quite understand the note that the juror submitted, but after conferring with him in substance the juror submitted a request for the dates of arrest of the defendants in this case. I believe there was evidence given in the case, although I am not sure, but it may have come up in the discussion in the robing room. However, irrespective of that, I believe there is evidence in the case, too, and it has some significance, of course, in the light of my charge with respect to statements made, following arrest.

Now, can counsel agree on those dates?

Mr. Kove: I think we can.

The Court: Will you please state the respective dates then?

Mr. Kove: I think at one time I did indicate the date of the arrest because of some objection that I made. However, it is September 21, the date of the arrest of my client. I believe that is correct.

The Court: Well, see if we can't get those dates in order. It ought not to be too much trouble, and in that way we can give it to the jurors right away.

(777) Mr. Sweeney: May we approach the bench on that, your Honor?

The Court: Gentlemen, please let us get started on these dates, as the jurors are waiting.

Mr. Fruchtman: As to the date of arrest of my client, William McKenney, it is September 21.

Discussion

Mr. Kove: And the same as to my client, your Honor, Anthony Carminati.

Mr. Fusco: And as to my client, your Honor, Michael Galgano, that is November 19.

The Court: All right. Now do you want to come up, Mr. Sweeney?

Mr. Sweeney: Yes, sir, your Honor, I do.

(Discussion between Court and Mr. Sweeney at bench, without the hearing of the jury, and not reported.)

The Court: All right. What is the date, Mr. Sweeney? Will you please state it for the record and so the jurors can hear it?

Mr. Sweeney: August 24, your Honor.

Mr. Lankenau: That is correct, your Honor.

The Court: Now, ladies and gentlemen, before you start your deliberations I have another (778) task. There have been 14 jurors in the case and you know, of course, that we selected two alternates not knowing how long the case would take, and with the prospect of an extended trial we always select additional jurors.

(Addressing alternate jurors) You have been very devoted in your duties here as have all the other jurors. I do not know whether at this time where we are about to discharge you that you have a sense of frustration or a sense of relief that you are not going inside. In any event, I want each of you to feel that your readiness to sit longer than the usual hours, your participation in the trial, and the attention that you have given is as much a part in the performance of your duty as a juror as if you were now to go inside and deliberate. However, the law does not permit the 14 jurors to go in, only the first 12. So under those circumstances, why, we will have to excuse you.

Discussion

(Alternate jurors excused and the jury started their deliberations at 5.05 p.m.)

(The following proceedings took place in the robing room.)

(779) Mr. Lankenau: With respect to the request of Mr. Kove that in the event the jury disbelieved Oglesby's testimony as to the conversations alleged to have taken place between Oglesby and the defendant Carminati, that then the jury should find the defendant Carminati not guilty, it is the position of the Government, your Honor, that unless you held that such request was untimely, that as a matter of substance I believe the defendant is entitled to hat request, because the only other evidence against Carminati in the case is the meeting with Russano on August 22 and subsequently the meeting which occurred between the Russanos and Rich and the defendant's connection which ensued thereafter, so that as to the evidence of the events of August 22 standing alone, I doubt whether your Honor would permit it to go to the jury.

The Court: Any objection to calling the jury back now?

Mr. Kove: None whatsoever.

The Court: Call the jury back. I am not going to allow the question of untimeliness in submitting the request to stand in the way.

(At this point the discussion in the robing room terminated and at 5.18 p.m. the jury returned to the courtroom and the following took place.)

(780) The Court: I am sorry, ladies and gentlemen, but there is one instruction I overlooked at the time of my main charge that I desire to give you, and that is with respect to the defendant Carminati, as to whom the principal testimony was given by the witness Oglesby, and it made refer-

ence to four different incidents. If at the conclusion of your review of all the evidence you disbelieve Oglesby's testimony, that is, disbelieve in substance his statements made with respect to the defendant Carminati, then I will instruct you to find the defendant Carminati not guilty.

Does that meet your requirement, Mr. Kove?

Mr. Kove: Yes, your Honor.

The Court: You may resume your deliberations.

(At 5.20 p.m. the jury resumed their deliberations, and at 5.45 p.m. the following proceedings took place in the robing room.)

The Court: I have a note from the jury which reads as follows:

> "We would like a copy of the minutes. If the minutes are denied us can we find out if an agent was present, or anyone else, when Galgano made the statement (Botto's testimony) (781) 'My stuff was good when I gave it to Russano. Whatever he does with it later I don't know.'"

I am definitely opposed to giving them a full set of the minutes, but I am prepared to answer their question.

My recollection of the testimony is that there is no evidence in the case to indicate that anybody was present other than Miss Bridges, Boto and Galgano.

Does that accord with your recollection, Mr. Fusco?

Mr. Fusco: Yes.

The Court: Mr. Lankenau?

Mr. Lankenau: Your Honor, subsequently Carminati was present. Botto testified that he met Carminati through Galgano.

Mr. Kove: That was stricken.

Discussion

The Court: Advise me where there is a claim made by anybody that somebody else was present at the time of that conversation.

Mr. Kove: I don't even recall whether it was said at that particular conversation.

Mr. Lankenau: Your Honor, I am simply stating that the conversation was stricken out but (782) the fact of the introduction was not stricken out.

The Court: Show me where.

Mr. Lankenau: Right here, your Honor (indicating).

The Court: He said 15 minutes later.

Mr. Lankenau: That is correct. I simply said at the time of the first conversation with Galgano that Carminati was not present, but Carminati was present in the bar that afternoon.

The Court: Why do we have to get into that? Isn't the question whether or not somebody else was present when the conversation took place? Is there any question that nobody was present at the time? They didn't ask whether anyone was present subsequently.

Now, the Court is disposed to send the following note back to the jury unless counsel feel that they would like the jury brought in and instructed:

Members of the jury: there is no testimony in the case that anybody other than Miss Martha Bridges, Michael Botto and Michael Galgano were present at the time of the conversation related by Botto on October 16, 1956.

(783) Do you have any objection to that?

Mr. Lankenau: Your Honor, I feel that there was testimony that Carminati was introduced to Botto by Galgano that very afternoon.

The Court: You show me in the minutes where there is any testimony that an agent was present or anyone else

when Galgano made the statement—and I am now still quoting from the note sent by the jury—"(Botto's testimony) 'My stuff was good when I gave it to Russano. Whatever he does with it later I don't know.'"

If you will show it to me in the record I will send it in to the jury.

Mr. Lankenau: There was no one else present at that time.

The Court: That is what the jury only asked for, and I think it is very unfair to have it related to other testimony that the jury did not ask for.

Mr. Lankenau: I had no such intention.

The Court: I asked you to find out specifically if anybody else was present. The jury didn't ask for anything else.

Do you have any objection to my sending that (784) note in?

Mr. Lankenau: No, your Honor.

The Court: Do you have any objection to sending the note in as I have indicated?

Mr. Fusco: No.

The Court: Do you have any objection to the note as I have summarized the testimony?

Mr. Fusco: No, I think it is very fair.

The Court: I am not asking for your judgment as to whether or not it is fair; I am simply asking either one of you to find out if there is anything in the record that will warrant a different answer to the jury than the one I am about to send in.

Mr. Fusco: No, sir.

Mr. Lankenau: No, sir.

The Court: It may be sent in then.

(At this point the conference in the robing room terminated.)

Discussion

(The jury went to dinner at 7.00 p.m. escorted by the marshals and returned to the juryroom and resumed their deliberations at approximately 8.10 p. m.)

(At 8.45 p.m. the jury returned to the courtroom and the following proceedings took place.)

(785) The Court: Members of the jury, I have your note which has a number of requests. The first one is, "May we have the minutes?"

Well, these minutes run I should judge to about four or five hundred pages and I frankly can see no purpose in giving you the minutes of the entire trial.

You go back into the juryroom and decide what testimony you want read, and it does not make any difference if you want it all read, or if you want a specific portion read, as I will arrange, of course, to have the minutes read to you, but I see no purpose in handing you four or five hundred pages of minutes to run through.

Will you please go back into your juryroom and decide what portion you want read and then it will be read.

You also have other requests here, "Bankers Trust," and from it is not clear to me whether you want Exhibit 33 which has to do with the 12 envelopes, or if you want Exhibits 7, 18 and 33.

The Foreman: Yes, sir, all three.

The Court: Then those three exhibits will be handed to you.

(786) And then you also ask for the pictures of crash, and those exhibits will be submitted to you.

Again, with respect to the minutes or any portion of the testimony that you want read, please decide what you to you.

Now, have you shown defense counsel all the exhibits? want read and without restriction it will be, as I say, read

Mr. Londin: Yes, sir. Please hand them to the foreman.

(At this point the proceedings in the courtroom in the presence of the jury terminated and the jury resumed their deliberations at 8.50 p.m.)

(At 9.05 p.m. the following proceedings took place in the robing room.)

The Court: I have this note from the jury and I wanted to call you gentlemen into the robing room so that you may hear what they ask for, and the note reads as follows:

> "We only want Agent Dugan's testimony concerning Carminati, also testimony given when Galgano allegedly made the statement 'When I give the stuff to Russano it is good quality. What happens after that I don't know.' (787) Who was present at this time? Also testimony concerning seven quarters one night and three-quarters another night. What do those guys mean."

Now, with respect to the first question or request dealing with Agent Dugan's concerning Carminati, it so happens that I had asked the court reporter to get that up for me and I have that testimony here. Now, if you would prefer to have the reporter read it from his notes, why, we will do it, but it so happens that that particular part has already been transcribed.

Mr. Kove: No, sir, I do not see any reason why we should have the reporter read it from his notes when the transcript is readily available.

The Court: All right.

Then that is this part here with respect to Dugan's testimony on August 22 (indicating).

Mr. Kove: Yes, sir.

Discussion

The Court: And now with respect to the testimony given when Galgano allegedly made the statement "When I give the stuff to Russano it is good quality. What happens after that I don't know." I find this starts on page 67 or 65, or we will start (788) at page 65, and then we will read the cross.

Mr. Fusco: I have the transcript here, your Honor, and on page 222, does that accord with your view also, Mr. Londin?

Mr. Londin: I have not come to it as yet.

The Court: There is just one reference there, and then the next time I see it is at page 244.

Mr. Londin: Page 222 is where I see it.

Mr. Fusco: Yes, right about the center of the page at 222.

The Court: Then you will read 221 and 222, and then the testimony concerning the seven quarters that was given by Oglesby, and that is at page 40, and unless there is some other place that you gentlemen can point out where other testimony appears, that is what we will have read.

(At 9.25 p.m. the jury returned to the courtroom and the following proceedings took place.)

The Court: Now, members of the jury, I have your note in which you ask as follows:

> "We only want Agent Dugan's testimony concerning Carminati, also testimony given when Galgano allegedly made the statement (789) 'When I give the stuff to Russano it is good quality. What happens after that I don't know.' Who was present this time? Also testimony concerning seven quarters one night and three quarters another night. What do those guys mean?"

Discussion

Now, this testimony of Agent Dugan we will take first and that, as I recall it, concerns his testimony of when he stated he had certain premises under surveillance on August 22, 1956.

I will ask the court reporter to read that portion to you first.

(Testimony read.)

The Court: Now, the balance of that testimony relates to Agent Dugan's statement that he followed the Russanos to 180th Street, went into the building, then came down, they got to La Fontaine Avenue, and now if you want that read to you that is the balance of it.

A Juror: Yes.

(Record read.)

The Court: That is the portion that relates to Carminati.

Now, the next item you ask for is with respect (790) to the statement "When I give the stuff to Russano it is good quality. What happens after that I don't know.'" There are two items on that; one was given on the direct examination of the witness Botto and on cross. We will have the direct examination read first and then the cross.

I think, Mr. Reporter, you will find the direct there at page 65, and then the cross-examination.

(Record read.)

The Court: You do not want the objections read, do you?

Mr. Fusco: No, your Honor, I do not.

The Court: The cross-examination on the same subject appears at pages 221 and 222, and that is the portion which has just been read.

Mr. Fusco: Yes.

The Court: I think that is about all there was on that.

Discussion

Now you want the testimony with respect to the seven quarters and so on, and that is in the witness Oglesby's testimony, Mr. Reporter, and I think you will find that at page 40.

(Record read.)

(791) The Court: Then there is cross-examination if you want that read, too.

Jurors: No.

The Court: Is that sufficient now?

The Foreman: That is sufficient.

The Court: That is sufficient?

Jurors: Yes.

The Court: All right, then, you may return and resume your deliberations.

(At 9.45 p.m. the jury resumed their deliberations.)

(At 10.00 p.m. the following proceedings took place in the Court's chambers.)

The Court: All right.

Mr. Fusco: Your Honor, only after your Honor had the court reporter read certain portions of the testimony, and you will recall that one of the questions that was asked was as to who was present during the conversation that was had between Michael Botto and Michael Galgano, and even though that was previously asked and answered, it still was asked again but that was not answered this last time when they were brought back into the courtroom.

The Court: I think you are correct, that (792) that was part of the question, but I also think that the record should indicate that your request now is made at least ten if not fifteen minutes after I sent the jury back into the jury-room. I read to the members of the jury the testimony that they had requested and I believe I specifically at the

end of the reading asked if there was anything further they wanted, or whether that was sufficient and the answer was in the affirmative.

Now, since at this point almost fifteen minutes have gone by I see no purpose in recalling the jury, especially so since you have been fair enough to indicate, Mr. Fusco, that this very question was asked I believe in the first note that came out of the juryroom and was answered at that time. I am sure that if the jury wanted that answered they would have had no hesitancy in so requesting, and since this period of time has elapsed since the furnishing of the information to them, and in view of the fact that the matter was not called to my attention at the time the jury was present in the courtroom, I do not feel that there is any basis for recalling them.

Mr. Fusco: Your Honor has been most fair, (793) but may I except to your Honor's ruling on behalf of my client. I have no quarrel with that.

The Court: I think it is your duty to do that.

Mr. Fusco: Thank you.

(At this point the discussion in the Court's chambers terminated and the following proceedings took place at 10.10 p.m., when the jury returned to the courtroom.)

The Clerk: Members of the jury, please answer as your names are called.

(Roll of jurors called.)

The Clerk: Mr. Foreman, has the jury reached a verdict?

The Foreman: It has.

The Clerk: How say you?

The Foreman: We, the jury, find the defendant Frank Rich guilty on counts 3, 4, 8 and 14.

Verdict

We find the defendant Michael Galgano guilty on count 14.

We find the defendant William McKenney, Jr. guilty on count 14.

And we find the defendant Tony Carminati guilty on count 14.

(794) The Clerk: Members of the jury, listen to your verdict as it stands recorded.

You say you find the defendant Rich guilty on counts 3, 4, 8 and 14; the defendant Michael Galgano guilty on count 14; the defendant William McKenney, Jr. guilty on count 14 and the defendant Tony Carminati guilty on count 14?

Jurors: Yes.

The Clerk: And so say all of you?

Jurors: We do, yes.

Mr. Kove: May we have a poll of the jurors, your Honor?

The Court: Yes.

(Thereupon the jury was polled by the clerk and each juror individually stated the above to be his or her verdict.)

Mr. Kove: If your Honor please, I respectfully move now that the verdict be set aside with respect to the defendant Anthony Carminati as being against the law and against the weight of the evidence in this case.

The Court: Motion denied.

Mr. Fruchtman: The defendant William McKenney, Jr., your Honor, I move the same, that the (795) verdict be set aside as contrary to law and as against the weight of the evidence.

The Court: Motion denied.

Verdict

Mr. Sweeney: On behalf of the defendant Frank Rich I move to set aside the verdict on the ground that it is against the law, contrary to law and against the weight of the evidence.

The Court: Motion denied.

Mr. Fusco: If your Honor please, on behalf of Michael Galgano I move to set the verdict aside as being contrary to the evidence and contrary to law.

The Court: Motion denied.

Mr. Fusco: I respectfully except.

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